

INTERNAL USE ONLY

8 November 1971

NOTE FOR: Mr. Bavis

SUBJECT: Equal Employment Opportunity Act


1. Per our telecon of Friday, attached is the Senate report on S. 2515, Equal Employment Opportunities Enforcement Act of 1971, which deals with nondiscrimination in Federal employment. The proposed statutory provisions are found on pages 71 and 72, clipped. Your attention is invited to subsections dealing with application of the law (717(a)) and access to courts (717(c)).

2. In sum, as presently written the section would apply to Agency employees and applicants, give the Civil Service Commission overview, appeal and enforcement powers, and give an aggrieved applicant or employee the right to file a civil action.

3. Thus the bill could be viewed as subordinating the Director's responsibility to protect intelligence sources and methods, impairing his existing authority to terminate employees, and posing the classic dilemma of either revealing (outside of the Agency within the Executive Branch or within the judicial system) secrets to defend against an alleged grievance which has no foundation or, by inaction to preserve security, permitting the alleged aggrieved to win with no contest.

4. In view of the fact that the House has already acted favorably on its version of this legislation (H. R. 1746, which hopefully you have had previously) and the Senate has reported out a bill, there is an urgent need for fast action. As I told you, the House dropped entirely from its version of the bill the section dealing with discrimination in Federal employment.

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Assistant Legislative Counsel

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EDUCATION AND LABOR 309

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" . . . to consist of 38 Members: (a) Measures relating to education or labor generally, (b) Child labor, (c) Columbia Institution for the Deaf, Dumb, and Blind; Howard University; Freedmen's Hospital; and Saint Elizabeths Hospital, (d) Convict labor and the entry of goods made by convicts into interstate commerce, (e) Labor standards, (f) Labor statistics, (g) Mediation and arbitration of labor disputes, (h) Regulation or prevention of importation of foreign laborers under contract, (i) school-lunch program, (j) United States Employees' Compensation Commission, (k) Vocational rehabilitation, (l) Wages and hours of labor, (m) Welfare of miners.

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"...to consist of 38 Members: (1) Relations of the United States with foreign nations generally, (2) Establishment of boundary lines between the United States and foreign nations, (3) Protection of American citizens abroad and expatriation, (4) Neutrality, (5) International conferences and congresses, (6) The American National Red Cross, (7) Intervention abroad and declaration of war, (8) Measures relating to the diplomatic service, (9) Acquisition of land and buildings for embassies and legations in foreign countries (10) Measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad, (11) United Nations Organization and international financial and monetary organizations, (12) Foreign loans."

Thomas E. Morgan (D. -Pa.), Chairman\*

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\* The Chairman and Ranking Minority Member are ex officio members of all subcommittees.

26 11478

§ 711.101

Title 5—Administrative Personnel

**PART 711—LABOR-MANAGEMENT RELATIONS**

**Subpart A—Procedures Under Section 6(e) of Executive Order 11491**

- Sec.  
711.101 Designation.  
711.102 Controlling principles and procedures.  
711.103 Operating responsibilities.

**AUTHORITY:** The provisions of this Part 711 issued under sec. 6(e), E.O. 11491; 3 CFR, 1969 Comp., p. 191.

**SOURCE:** The provisions of this Part 711 appear at 35 F.R. 13722, Aug. 28, 1970, unless otherwise noted.

**Subpart A—Procedures Under Section 6(e) of Executive Order 11491**

**§ 711.101 Designation.**

In accordance with section 6(e) of Executive Order 11491, the Chairman of the Commission designates the Vice Chairman of the Commission to perform the duties of the Assistant Secretary of Labor for Labor-Management Relations in matters arising under section 6 (a) and (b) of that order which involve the Department of Labor. In the absence of the Vice Chairman, the Chairman designates the remaining member of the Commission to perform these duties.

**§ 711.102 Controlling principles and procedures.**

(a) In carrying out the responsibilities described in § 711.101, the Vice Chairman or the Commissioner, as appropriate, and others acting in his behalf shall be governed by the basic principles and procedures as may be appropriate in the regulations of the Assistant Secretary of Labor for Labor-Management Relations to implement section 6 of Executive Order 11491. These regulations, which comprise Chapter II of Title 29 of the Code of Federal Regulations are incorporated herein by reference and are hereinafter referred to as the "regulations of the Assistant Secretary".

(b) Notwithstanding the provisions of paragraph (a) of this section, administration of the reporting and disclosure requirements of Subpart A of Part 204 of the regulations of the Assistant Secretary remain the responsibility of the Assistant Secretary. However, the Vice Chairman or the Commissioner, as appropriate, is responsible for receiving complaints of alleged violations of the standards of conduct and taking action thereon in accordance with the provisions of Subpart B of Part 204 of the regulations of the Assistant Secretary.

(c) A petition or complaint under this subpart shall be filed with the General Counsel, U.S. Civil Service Commission, Washington, D.C. 20415, utilizing the forms prescribed by the Assistant Secretary.

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**§ 711.103 Operating responsibilities.**

(a) The Vice Chairman or the Commissioner, as appropriate, is responsible for taking the actions and making the decisions of the Assistant Secretary which are referred to in §§ 202.16, 203.25, 203.26, and 204.73 of the regulations of the Assistant Secretary.

(b) In addition to receiving petitions and complaints under this subpart, the General Counsel of the Commission is primarily responsible for providing such staff assistance as the Vice Chairman or the Commissioner, as appropriate, may need in order to carry out his responsibilities under this subpart. For example, he shall perform the duties of those officials of the Department of Labor who are described in §§ 201.15 and 201.16 of the regulations of the Assistant Secretary.

(c) The Vice Chairman or the Commissioner, as appropriate, and the General Counsel may request other employees of the Commission to assist in carrying out their responsibilities under this subpart; and, in accordance with section 6(c) of Executive Order 11491, they may request and use the services of employees of other agencies for this purpose.

**PART 713—EQUAL OPPORTUNITY**

**Subpart A [Reserved]**

**Subpart B—Equal Opportunity Without Regard to Race, Color, Religion, Sex, or National Origin**

**GENERAL PROVISIONS**

- Sec.  
713.201 Purpose and applicability.  
713.202 General policy.  
713.203 Agency program.  
713.204 Implementation of agency program.  
713.205 Commission review and evaluation of agency program operations.

**AGENCY REGULATIONS FOR PROCESSING COMPLAINTS OF DISCRIMINATION**

- 713.211 General.  
713.212 Coverage.  
713.213 Precomplaint processing.  
713.214 Filing and presentation of complaint.

- Sec.  
713.215 Reject  
713.216 Invest  
713.217 Adjust  
713.218 Hearing  
713.219 Relatio  
713.220 Avoida  
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713.234 Appella  
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713.236 Relatio

**REPORTS :**

- 713.241 Reports :

**Subpart C—Miscellaneous**

- 713.301 Applicab  
713.302 Agency s

**Subpart D—Equal Opportunity in Politics, Marital Status**

- 713.401 Equal op  
713.402 Equal op  
713.403 Equal op  
713.404 Equal op  
713.405 Equal op

**AUTHORITY:** The provisions of this Part 713 issued under 5 U.S.C. 7154, 7301, E.O. 11491, p. 218, E.O. 11615, p. 308, E.O. 11629, unless otherwise noted.

**Subpart**

**Subpart B—Equal Opportunity Without Regard to Sex, or National Origin**

**GENERAL**

**§ 713.201 Purpose.**

(a) **Purpose.** The regulations under this part shall establish a program for equal employment and personnel out regard to race, national origin, sex, and marital status. The Commission will receive and entertain person dissatisfied with the processing of his complaint on grounds of sex, or national origin, or marital status. (b) **Applicability.** The regulations apply to all persons defined in section 713.201 of the States Code, and

part B of Part 204 of the Assistant Secretary. or complaint under this be filed with the General Civil Service Commission, D.C. 20415, utilizing the ribed by the Assistant

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## -EQUAL OPPORTUNITY

part A [Reserved]

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GENERAL PROVISIONS

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- Sec.  
713.215 Rejection or cancellation of com-  
plaint.  
713.216 Investigation.  
713.217 Adjustment of complaint and offer  
of hearing.  
713.218 Hearing.  
713.219 Relationship to other agency ap-  
pellate procedures.  
713.220 Avoidance of delay.  
713.221 Decision by head of agency or des-  
ignee.  
713.222 Complaint file.

### APPEAL TO THE COMMISSION

- 713.231 Entitlement.  
713.232 Where to appeal.  
713.233 Time limit.  
713.234 Appellate procedures.  
713.235 Review by the Commissioners.  
713.236 Relationship to other appeals.

### REPORTS TO THE COMMISSION

- 713.241 Reports to the Commission.

### Subpart C—Minority Group Statistics System

- 713.301 Applicability.  
713.302 Agency systems.

### Subpart D—Equal Opportunity Without Regard to Politics, Marital Status, or Physical Handicap

- 713.401 Equal opportunity without regard to  
politics, marital status, or phys-  
ical handicap.

**AUTHORITY:** The provisions of this Part 713 issued under 5 U.S.C. 1301, 3301, 3302, 7151-7154, 7301, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, E.O. 11222; 3 CFR, 1964-1965 Comp., p. 306, E.O. 11478; 3 CFR, 1969 Comp., unless otherwise noted.

### Subpart A [Reserved]

### Subpart B—Equal Opportunity With- out Regard to Race, Color, Religion, Sex, or National Origin

#### GENERAL PROVISIONS

#### § 713.201 Purpose and applicability.

(a) *Purpose.* This subpart sets forth the regulations under which an agency shall establish a continuing affirmative program for equal opportunity in employment and personnel operations without regard to race, color, religion, sex, or national origin and under which the Commission will review an agency's program and entertain an appeal from a person dissatisfied with an agency's processing of his complaint of discrimination on grounds of race, color, religion, sex, or national origin.

(b) *Applicability.* (1) This subpart applies (i) to military departments as defined in section 102 of title 5, United States Code, and executive agencies

(other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof, including employees paid from nonappropriated funds, and (ii) to those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the competitive service and to the employees in those positions.

(2) This subpart does not apply to aliens employed outside the limits of the United States.

[34 F.R. 5367, Mar. 19, 1969, as amended at 34 F.R. 14023, Sept. 4, 1969]

#### § 713.202 General policy.

It is the policy of the Government of the United States and of the government of the District of Columbia to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency. (E.O. 11478; 3 CFR, 1969 Comp.) [34 F.R. 14023, Sept. 4, 1969]

#### § 713.203 Agency program.

The head of each agency shall exercise personal leadership in establishing, maintaining, and carrying out a continuing affirmative program designed to promote equal opportunity in every aspect of agency personnel policy and practice in the employment, development, advancement, and treatment of employees. Under the terms of its program, an agency shall, to the maximum extent possible:

(a) Provide sufficient resources to administer its equal employment opportunity program in a positive and effective manner;

(b) Conduct a continuing campaign to eradicate every form of prejudice or discrimination based upon race, color, religion, sex, or national origin, from the agency's personnel policies and practices and working conditions, including disciplinary action against employees who engage in discriminatory practices;

(c) Utilize to the fullest extent the present skills of employees by all means, including the redesigning of jobs where feasible so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements;

§ 713.204

Title 5—Administrative Personnel

(d) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs, and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;

(e) Communicate the agency's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, or national origin, and solicit their recruitment assistance on a continuing basis;

(f) Participate at the community level with other employers, with schools and universities, and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability;

(g) Review, evaluate, and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policy and program;

(h) Provide recognition to employees, supervisors, managers, and units demonstrating superior accomplishment in equal employment opportunity;

(i) Inform its employees and recognized employee organizations of the affirmative equal employment opportunity policy and program and enlist their cooperation;

(j) Provide for counseling employees and applicants who believe they have been discriminated against because of race, color, religion, sex, or national origin and for resolving informally the matters raised by them;

(k) Provide for the prompt, fair, and impartial consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, or national origin; and

(l) Establish a system for periodically evaluating the effectiveness of the agency's overall equal employment opportunity effort.

(E.O. 11478; 3 CFR, 1969 Comp.) [34 F.R. 14023, Sept. 4, 1969]

§ 713.204 Implementation of agency program.

To implement the program established under this subpart, an agency shall:

(a) Develop the plans, procedures, and regulations necessary to carry out its program established under this subpart;

(b) Appraise its personnel operations at regular intervals to assure their conformity with the policy in § 713.202 and its program established in accordance with § 713.203;

(c) Designate a Director of Equal Employment Opportunity, and such Equal Employment Opportunity Officers and Equal Employment Opportunity Counselors as may be necessary, to assist the head of the agency to carry out the functions described in this subpart in all organizational units and locations of the agency. The functioning of the Director of Equal Employment Opportunity, the Equal Employment Opportunity Officer, and the Equal Employment Opportunity Counselor shall be subject to review by the Commission. The Director of Equal Employment Opportunity shall be under the immediate supervision of the head of his agency, and shall be given the authority necessary to enable him to carry out his responsibilities under the regulations in this subpart;

(d) Assign to the Director of Equal Employment Opportunity the functions of:

(1) Advising the head of his agency with respect to the preparation of plans, procedures, regulations, reports, and other matters pertaining to the policy in § 713.202 and the agency program required to be established under § 713.203;

(2) Evaluating from time to time the sufficiency of the total agency program for equal employment opportunity and reporting thereon to the head of the agency with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities;

(3) When authorized by the head of the agency, making changes in programs and procedures designed to eliminate discriminatory practices and improve the agency's program for equal employment opportunity;

(4) Providing for counseling, by an Equal Employment Opportunity Coun-

selor, of any aggrieved applicant for employment who has been discriminated against on the basis of race, color, religion, sex, or national origin and who has filed a complaint with the Equal Employment Opportunity Commission under § 713.221.

(5) Providing for investigation of individual discrimination in the agency, through § 713.222;

(6) Providing for mediation, conciliation, and disposition of complaints by organizations, parties of discrimination matters within the agency, related to an individual discrimination suit through § 713.222, as terminated by the agency with notification of submitting the alleged discrimination.

(7) When authorized by the agency making a determination under § 713.221 for the head of the agency to take such corrective action as is warranted by the circumstances when an employee has engaged in a discriminatory practice; and

(8) When not authorized by the head of the agency to take such corrective action as is warranted by the circumstances when an employee has engaged in a discriminatory practice;

(e) Publicize to the public the name and address of an Equal Employment Opportunity Officer; and

(3) The name of the Equal Employment Opportunity Counselor and the office he serves; his availability;

# Implementation of agency

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seler, of any aggrieved employee or ap-  
plicant for employment who believes that  
he has been discriminated against be-  
cause of race, color, religion, sex, or  
national origin and for attempting to  
resolve on an informal basis the matter  
raised by the employee or applicant be-  
fore a complaint of discrimination may  
be filed under § 713.214;

(5) Providing for the receipt and in-  
vestigation of individual complaints of  
discrimination in personnel matters  
within the agency, subject to §§ 713.211  
through 713.222;

(6) Providing for the receipt, investi-  
gation, and disposition of general alle-  
gations by organizations or other third  
parties of discrimination in personnel  
matters within the agency which are un-  
related to an individual complaint of  
discrimination subject to §§ 713.211  
through 713.222, under procedures de-  
termined by the agency to be appropriate,  
with notification of decision to the party  
submitting the allegation.

(7) When authorized by the head of  
the agency making the decision under  
§ 713.221 for the head of the agency on  
complaints of discrimination and order-  
ing such corrective measures as he may  
consider necessary, including the recom-  
mendation for such disciplinary action  
as is warranted by the circumstances  
when an employee has been found to  
have engaged in a discriminatory prac-  
tice; and

(8) When not authorized to make the  
decision for the head of the agency on  
complaints of discrimination, reviewing,  
at his discretion, the record on any com-  
plaint before the decision is made under  
§ 713.221 and making such recommenda-  
tions to the head of the agency or his  
designee as he considers desirable, in-  
cluding the recommendation for such  
disciplinary action as is warranted by  
the circumstances when an employee is  
found to have engaged in a discrimina-  
tory practice;

(e) Publicize to its employees:

(1) The name and address of the Direc-  
tor of Equal Employment Opportunity;

(2) Where appropriate, the name and  
address of an Equal Employment Oppor-  
tunity Officer; and

(3) The name and address of the  
Equal Employment Opportunity Coun-  
selor and the organizational units he  
serves; his availability to counsel an em-

ployee or qualified applicant for employ-  
ment who believes that he has been dis-  
criminated against because of race, color,  
religion, sex, or national origin; and the  
requirement that an employee or quali-  
fied applicant for employment must con-  
sult the Counselor as provided by § 713-  
213 about his allegation of discrimina-  
tion because of race, color, religion, sex,  
or national origin before a complaint as  
provided by § 713.214 may be filed; and

(f) Make readily available to its em-  
ployees a copy of its regulations issued  
to carry out its program of equal em-  
ployment opportunity.

[34 F.R. 5368, Mar. 19, 1969; 34 F.R. 9705,  
June 25, 1969, as amended at 34 F.R. 14023,  
Sept. 4, 1969]

## § 713.205 Commission review and eval- uation of agency program opera- tions.

The Commission shall review and eval-  
uate agency program operations period-  
ically, obtain such reports as it deems  
necessary, and report to the President as  
appropriate on overall progress. When it  
finds that an agency's program opera-  
tions are not in conformity with the  
policy set forth in § 713.202 and the regu-  
lations in this subpart, the Commission  
shall require improvement or corrective  
action to bring the agency's program  
operations into conformity with this  
policy and the regulations in this subpart.  
(E.O. 11478; 3 CFR, 1969 Comp.) [34 F.R.  
14024, Sept. 4, 1969]

## AGENCY REGULATIONS FOR PROCESSING COMPLAINTS OF DISCRIMINATION

### § 713.211 General.

An agency shall insure that its regula-  
tions governing the processing of com-  
plaints of discrimination on grounds of  
race, color, religion, sex, or national  
origin comply with the principles and re-  
quirements in §§ 713.212 through 713.222.  
[34 F.R. 5369, Mar. 19, 1969]

### § 713.212 Coverage.

(a) The agency shall provide in its  
regulations for the acceptance of a com-  
plaint from any aggrieved employee or  
applicant for employment who believes  
that he has been discriminated against  
because of race, color, religion, sex, or  
national origin. A complaint may also be  
filed by an organization for the aggrieved  
person with his consent.

§ 713.213

Title 5—Administrative Personnel

(b) Sections 713.211 through 713.222 do not apply to the consideration by an agency of a general allegation of discrimination by an organization or other third party which is unrelated to an individual complaint of discrimination subject to §§ 713.211 through 713.222.

[34 F.R. 5369, Mar. 10, 1969, as amended at 34 F.R. 14024, Sept. 4, 1969]

§ 713.213 Precomplaint processing.

(a) An agency shall require that an aggrieved person who believes that he has been discriminated against because of race, color, religion, sex, or national origin consult with an Equal Employment Opportunity Counselor when he wishes to resolve the matter. The agency shall require the Equal Employment Opportunity Counselor to make whatever inquiry he believes necessary into the matter; to seek a solution of the matter on an informal basis; to counsel the aggrieved person concerning the merits of the matter; to keep a record of his counseling activities so as to brief, periodically, the Equal Employment Opportunity Officer on those activities; and, when advised that a complaint of discrimination has been accepted from an aggrieved person, to submit a written report to the Equal Employment Opportunity Officer, with a copy to the aggrieved person, summarizing his actions and advice both to the agency and the aggrieved person concerning the merits of the matter. The Equal Employment Opportunity Counselor shall, insofar as is practicable, conduct his final interview with the aggrieved person not later than 15 workdays after the date on which the matter was called to his attention by the aggrieved person. The Equal Employment Opportunity Counselor shall advise the aggrieved person in the final interview of his right to file a complaint of discrimination with the organization's Equal Employment Opportunity Officer if the matter has not been resolved to his satisfaction and of the time limits governing the acceptance of a complaint in § 713.214. The Equal Employment Opportunity Counselor shall not reveal the identity of an aggrieved person who has come to him for consultation, except when authorized to do so by the aggrieved person, until the agency has accepted a complaint of discrimination from him.

(b) The Equal Employment Opportunity Counselor shall be free from re-

straint, interference, coercion, discrimination, or reprisal in connection with the performance of his duties under this section.

[34 F.R. 5369, Mar. 10, 1969]

§ 713.214 Filing and presentation of complaint.

(a) *Time limits.* (1) An agency shall require that a complaint be submitted in writing by a complainant or his representative. The agency may accept the complaint for processing in accordance with this subpart only if—

(i) The complainant brought to the attention of the Equal Employment Opportunity Counselor the matter causing him to believe he had been discriminated against within 15 calendar days of the date of that matter or, if a personnel action, within 15 calendar days of its effective date, and

(ii) The complainant submitted his written complaint to the Equal Employment Opportunity Officer within 15 calendar days of the date of his final interview with the Equal Employment Opportunity Counselor.

(2) The agency shall extend the time limits in this section (1) when the complainant shows that he was not notified of the time limits and was not otherwise aware of them, or that he was prevented by circumstances beyond his control from submitting the matter within the time limits, or (ii) for other reasons considered sufficient by the agency.

(b) *Presentation of complaint.* At any stage in the presentation of a complaint, including the counseling stage under § 713.213, the complainant shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of his own choosing. If the complainant is an employee of the agency, he shall have a reasonable amount of official time to present his complaint if he is otherwise in an active duty status. If the complainant is an employee of the agency and he designates another employee of the agency as his representative, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have a reasonable amount of official time, if he is otherwise in an active duty status, to present the complaint.

[34 F.R. 5369, Mar. 10, 1969]

§ 713.215 Rejection of complaint.

When the head of the agency, or his designee, decides to reject a complaint because it is not within the scope of § 713.212 or to cancel a complaint because of a failure of the complainant to prosecute the complaint, a separation of the complainant from the agency is not related to his complaint. The decision of the agency to reject a complaint and the time limit for filing an appeal may be submitted to the Equal Employment Opportunity Commission (E.O. 11491; 3 CFR, 1969, 1969-1, 14917, Sept. 25, 1970).

§ 713.216 Investigation.

(a) The Equal Employment Opportunity Officer shall advise the complainant of the acceptance of a complaint and the time limit for filing an appeal. The Equal Employment Opportunity Officer shall provide for the prompt investigation of the complaint. The Equal Employment Opportunity Officer shall investigate the complaint by the Equal Employment Opportunity Officer or his representative, directly or indirectly, or by the head of the agency in which the complaint occurred. The agency shall authorize the Equal Employment Opportunity Officer to administer oaths to witnesses, to take statements of witnesses, to administer oaths of affirmation, and to take affidavits of confidence. The investigation shall include a thorough review of the circumstances under which the complaint occurred, the actions of the complainant and his representative, the treatment of other employees of the organizational segment alleged discrimination, the policies and practices of the agency in the situation which may constitute discrimination, if they have not been examined by the complainant. Informal appraisal of the utility of the complainant's complaint to the utilization of the complainant's group's statistical form in the but specific information membership or nonmembership of the complainant's group.



ference, coercion, discrimination in connection with the  
of his duties under this

Mar. 19, 1969]

### Filing and presentation of

limits. (1) An agency shall accept a complaint only if a complainant or his representative has first attempted to resolve the complaint with the agency. The agency may accept the complaint for processing in accordance with part 101.10 only if—

complainant brought to the  
the Equal Employment Op-  
instructor the matter causing  
he had been discriminated  
in 15 calendar days of the  
matter or, if a personnel  
in 15 calendar days of its  
and

complainant submitted his  
 laint to the Equal Employ-  
 tunity Officer within 15  
 s of the date of his final  
 h the Equal Employment  
 Counselor.

any shall extend the time section (i) when the com- s that he was not notified nits and was not otherwise l, or that he was prevented nces beyond his control the matter within the (ii) for other reasons con- nt by the agency.

ation of complaint. At any presentation of a complaint, counseling stage under complainant shall be free t, interference, coercion, or reprisal and shall to be accompanied, rep- advised by a representa- n choosing. If the com- employee of the agency, a reasonable amount of present his complaint if in an active duty status. nant is an employee of the designates another em- agency as his representa- esentative shall be free t, interference, coercion, or reprisal, and shall le amount of official time, se in an active duty status, complaint.

r. 19, 1969]

**§ 713.215 Rejection or cancellation of complaint.**

When the head of the agency, or his designee, decides to reject a complaint because it was not timely filed or because it is not within the purview of § 713.212 or to cancel a complaint because of a failure of the complainant to prosecute the complaint or because of a separation of the complainant which is not related to his complaint, he shall transmit the decision by letter to the complainant and his representative. The decision letter shall inform the complainant of his right to appeal the decision of the agency to the Commission and of the time limit within which the appeal may be submitted.

(E.O. 11491; 3 CFR, 1969 Comp., p. 191) [35  
F.R. 14917, Sept. 25, 1970]

**§ 713.216 Investigation.**

(a) The Equal Employment Opportunity Officer shall advise the Director of Equal Employment Opportunity of the acceptance of a complaint. The Director of Equal Employment Opportunity shall provide for the prompt investigation of the complaint. The person assigned to investigate the complaint shall occupy a position in the agency which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The agency shall authorize the investigator to administer oaths and require that statements of witnesses shall be under oath or affirmation, without a pledge of confidence. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate

an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file. (As used in this subpart, the term "investigative file" shall mean the various documents and information acquired during the investigation under this section—including affidavits of the complainant, of the alleged discriminating official, and of the witnesses and copies of, or extracts from, records, policy statements, or regulations of the agency—organized to show their relevance to the complaint or the general environment out of which the complaint rose.) If necessary, the investigator may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he shall not require or coerce an employee to provide this information. The agency shall furnish the complainant or his representative a copy of the investigative file.

(b) The Director of Equal Employment Opportunity shall arrange to furnish to the person conducting the investigation a written authorization (1) to investigate all aspects of complaints of discrimination, (2) to require all employees of the agency to cooperate with him in the conduct of the investigation, and (3) to require employees of the agency having any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence.

[34 F.R. 5369, Mar. 19, 1969, as amended at 34 F.R. 13656, Aug. 26, 1969]

**§ 713.217 Adjustment of complaint and offer of hearing.**

(a) The agency shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file. If an adjustment of the complaint is arrived at, the terms of the adjustment shall be reduced to writing and made part of the complaint file, with a copy of the terms of the adjustment provided the complainant.

(b) If an adjustment of the complaint is not arrived at, the complainant shall be notified in writing of the proposed disposition thereof. In that notice, the agency shall advise the complainant of his right to a hearing with a subsequent decision by the head of the agency or his





## Chapter I—Civil Service Commission

§ 713.220

and the complaint file, and the documents described in which have been acquired up to the processing of the complaint, including the original copy of the investigative file (which shall be by the appeals examiner in a recommended decision on the complaint), to the appeals examiner review the complaint file to determine whether further investigation is needed before scheduling the hearing. If the appeals examiner determines that further investigation is needed, he shall forward the complaint to the Director of Equal Employment Opportunity for investigation or arrange for the use of witnesses necessary for the investigation. The appeals examiner shall schedule the hearing for a time and place.

(1) *Attendance at hearing.* The hearing is limited to persons by the appeals examiner to be in connection with the com-

plaint. The appeals examiner shall conduct the hearing so as to bring out pertinent facts, including the production of documents. Rules of evidence shall be applied strictly, but the appeals examiner shall exclude irrelevant and immaterial evidence. Information received from a hearing on the complaint shall not be used in the complaint file. The complaint shall be received from the complainant, his representative, or the representatives of the agency. The hearing shall be given the opportunity to cross-examine witnesses and testify. Testimony shall be by oath or affirmation.

(2) *Powers of appeals examiner.* In the exercise of the powers vested in the appeals examiner by the agency in this subpart, the agency shall advise the appeals examiner to: (a) administer oaths or affirmations; (b) take the course of the hear-

(c) offer proof; (d) the number of witnesses; (e) any person would be unduly repeti-

(f) any person from the contumacious conduct or that obstructs the hearing. (g) *Request for hearing.* The appeals examiner shall request the agency to

make available as a witness at the hearing an employee requested by the complainant when he determines that the testimony of the employee is necessary. He shall also request the appearance of any other employee whose testimony he desires to supplement the information in the investigative file. The appeals examiner shall give the complainant his reasons for the denial of a request for the appearance of employees as witnesses and shall insert those reasons in the record of the hearing. The agency shall make its employees available as witnesses at a hearing on a complaint when requested to do so by the appeals examiner and it is administratively practicable to comply with the request. When it is not administratively practicable to comply with the request for a witness, the agency shall provide an explanation to the appeals examiner. If the explanation is inadequate, the appeals examiner shall so advise the agency and request it to make the employee available as a witness at the hearing. If the explanation is adequate, the appeals examiner shall insert it in the record of the hearing, provide a copy to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. Employees of the agency shall be in a duty status during the time they are made available as witnesses. Witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony at the hearing or during the investigation under § 713.216.

(f) *Record of hearing.* The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the appeals examiner at the hearing shall be made part of the record of the hearing. If the agency submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, he shall make the document available to the agency representative for reproduction.

(g) *Findings, analysis, and recommendations.* The appeals examiner shall transmit to the head of the agency or his designee (1) the complaint file (including the record of the hearing), (2) the findings and analysis of the appeals examiner with regard to the matter which gave rise to the complaint and the general environment out of which the complaint arose, and (3) the recommended decision of the appeals examiner

on the merits of the complaint, including recommended remedial action, where appropriate, with regard to the matter which gave rise to the complaint and the general environment out of which the complaint arose. The appeals examiner shall notify the complainant of the date on which this was done. In addition, the appeals examiner shall transmit, by separate letter to the Director of Equal Employment Opportunity, whatever findings and recommendations he considers appropriate with respect to conditions in the agency having no bearing on the matter which gave rise to the complaint or the general environment out of which the complaint arose.

[34 F.R. 5370, Mar. 19, 1969, as amended at 34 F.R. 13657, Aug. 26, 1969]

## § 713.219 Relationship to other agency appellate procedures.

(a) Except as provided in paragraphs (b) and (c) of this section, when an employee makes a written allegation of discrimination on grounds of race, color, religion, sex, or national origin, in connection with an action that would otherwise be processed under a grievance or appeals system of the agency the agency may process the allegation of discrimination under that system when the system meets the principles and requirements in §§ 713.212 through 713.220 and the head of the agency, or his designee, makes the decision of the agency on the issue of discrimination. That decision on the issue of discrimination shall be incorporated in and become a part of the decision on the grievance or appeal.

(b) An allegation of discrimination made in connection with an appeal under Subpart B of Part 771 of this chapter shall be processed under that subpart.

(c) An allegation of discrimination made in connection with a grievance under Subpart C of Part 771 of this chapter shall be processed under this part.

(E.O. 11491; 3 CFR, 1969 Comp., p. 191) [35 F.R. 14917, Sept. 26, 1970]

## § 713.220 Avoidance of delay.

(a) The complaint shall be resolved promptly. To this end both the complainant and the agency shall proceed with the complaint without undue delay so that the complaint is resolved, except in unusual circumstances, within 60 calendar days after its receipt by the Equal Employment Opportunity Officer, exclusive of time spent in the processing of the complaint by the appeals examiner under

§ 713.221

Title 5—Administrative Personnel

§ 713.218. When the complaint has not been resolved within this limit, the complainant may appeal to the Commission for a review of the reasons for the delay. Upon review of this appeal, the Commission may require the agency to take special measures to insure prompt processing of the complaint or may accept the appeal for consideration under § 713.234.

(b) The head of the agency or his designee may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. However, instead of canceling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available.

(E.O. 11491, 3 CFR, 1969 Comp., p. 191) [35 F.R. 14917, Sept. 25, 1970]

§ 713.221 Decision by head of agency or designee.

(a) The head of the agency, or his designee, shall make the decision of the agency on a complaint based on information in the complaint file. A person designated to make the decision for the head of the agency shall be one who is fair, impartial, and objective.

(b) (1) The decision of the agency shall be in writing and shall be transmitted by letter to the complainant and his representative.

(2) When there has been a hearing on the complaint, the decision letter shall transmit a copy of the findings, analysis, and recommended decision of the appeals examiner under § 713.218(g) and a copy of the hearing record. The decision of the agency shall adopt, reject, or modify the decision recommended by the appeals examiner. If the decision is to reject or modify the recommended decision, the decision letter shall set forth the reasons for rejection or modification.

(3) When there has been no hearing and no decision under § 713.217(c), the decision letter shall set forth the findings, analysis, and decision of the head of the agency or his designee.

(c) The decision of the agency shall require any remedial action authorized by law determined to be necessary or desirable to resolve the issues of discrimination and to promote the policy of equal opportunity.

(d) The decision letter shall inform the complainant of his right to appeal the decision of the agency to the Com-

mission and of the time limit within which the appeal may be submitted.

(E.O. 11491, 3 CFR, 1969 Comp., p. 191) [35 F.R. 14917, Sept. 25, 1970]

§ 713.222 Complaint file.

The agency shall establish a complaint file containing all documents pertinent to the complaint. The complaint file shall include copies of (a) the written report of the Equal Employment Opportunity Counselor under § 713.213 to the Equal Employment Opportunity Officer on whatever precomplaint counseling efforts were made with regard to the complainant's case, (b) the complaint, (c) the investigative file, (d) if the complaint is withdrawn by the complainant, a written statement of the complainant or his representative to that effect, (e) if adjustment of the complaint is arrived at under § 713.217, the written record of the terms of the adjustment, (f) if no adjustment of the complaint is arrived at under § 713.217, a copy of the letter notifying the complainant of the proposed disposition of the complaint and of his right to a hearing, (g) if decision is made under § 713.217(c), a copy of the letter to the complainant transmitting that decision, (h) if a hearing was held, the record of the hearing, together with the appeals examiner's findings, analysis, and recommended decision on the merits of the complaint, (i) if the Director of Equal Employment Opportunity is not the designee, the recommendations, if any, made by him to the head of the agency or his designee, and (j) if decision is made under § 713.221, a copy of the letter transmitting the decision of the head of the agency or his designee. The complaint file shall not contain any document that has not been made available to the complainant or to his designated physician under § 294.401 of this chapter. (E.O. 11491, 3 CFR, 1969 Comp., p. 191) [35 F.R. 14917, Sept. 25, 1970]

APPEAL TO THE COMMISSION

§ 713.231 Entitlement.

(a) Except as provided by paragraph (b) of this section, a complainant may appeal to the Commission the decision of the head of the agency, or his designee:

(1) To reject his complaint because (i) it was not timely filed, or (ii) it was not within the purview of the agency's regulations; or

(2) To cancel cause of the complaint or to prosecute his complaint if the complainant has not related to his

(3) On the merits under § 713.217(c) if the decision does not relate to the complainant's

(b) A complainant may appeal to the Commission within this section when the action giving rise to the complaint is considered, or has been considered, in connection with an appeal of the complainant to the Commission. [34 F.R. 5371, Mar. 19, 1969]

§ 713.232 Where.

The complainant shall file in writing, either personally or through a representative, with the Board of U.S. Civil Service Commissioners, D.C. 20415.

[34 F.R. 5371, Mar. 19, 1969]

§ 713.233 Time limit.

(a) Except as provided by paragraph (b) of this section, a complainant shall file an appeal at or before the expiration of his agency's notice of his complaint but not later than 30 days after receipt of the decision.

(b) The time limit of this section may be extended at the discretion of the Board of U.S. Civil Service Commissioners, upon a showing that the complainant was not aware of it or that his control prevented appeal within the period. [34 F.R. 5371, Mar. 19, 1969]

§ 713.234 Appellate.

The Board of U.S. Civil Service Commissioners shall review the complainant's appeal. The board may remand the case to the agency for further action or a rehearing if necessary or if investigation conducted by the board personnel. This subsection further investigation or action may be taken from a remand from the board if there is no right to a hearing. The board shall issue a decision setting forth its reasons and shall send copies to the complainant and the agency.

at of the time limit within appeal may be submitted.  
[34 F.R. 5371, Mar. 10, 1969]

#### Complaint file.

Agency shall establish a complaint file containing all documents pertinent to the complaint. The complaint file shall include (a) the written report of the Equal Employment Opportunity Commission or the Equal Employment Opportunity Officer on the complaint counseling efforts with regard to the complainant;

(b) the complaint; (c) the complaint file; (d) if the complaint is filed by the complainant, a written statement of the complainant or his representative to that effect; (e) if the complaint is arrived at under § 713.217, the written record of the adjustment; (f) if no decision of the complaint is arrived at under § 713.217, a copy of the letter to the complainant of the proposition of the complaint and to a hearing; (g) if decision is arrived at under § 713.217(c), a copy of the complaint transmitting the decision; (h) if a hearing was held, the hearing, together with the examiner's findings, analysis, and decision on the merits of the complaint; (i) if the Director of Employment Opportunity is not satisfied with the recommendations, if by him to the head of the agency or his designee, and (j) if decision is arrived at under § 713.221, a copy of the decision transmitting the decision of the agency or his designee. The decision shall not contain any documents not been made available to the complainant or to his designated representative under § 294.401 of this chapter.  
[34 F.R. 5371, Mar. 10, 1969]

#### REPORT TO THE COMMISSION

##### Entitlement.

As provided by paragraph (a) of this section, a complainant may appeal to the Commission the decision of the agency, or his designee: (i) if he filed his complaint because it was not timely filed, or (ii) if it was not within the purview of the agency's jurisdiction.

(2) To cancel his complaint (i) because of the complainant's failure to prosecute his complaint, or (ii) because of the complainant's separation which is not related to his complaint; or

(3) On the merits of the complaint, under § 713.217(c) or § 713.221, but the decision does not resolve the complaint to the complainant's satisfaction.

(b) A complainant may not appeal to the Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the Commission.

[34 F.R. 5371, Mar. 10, 1969]

#### § 713.232 Where to appeal.

The complainant shall file his appeal in writing, either personally or by mail, with the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415.

[34 F.R. 5371, Mar. 10, 1969]

#### § 713.233 Time limit.

(a) Except as provided in paragraph (b) of this section, a complainant may file an appeal at any time after receipt of his agency's notice of final decision on his complaint but not later than 15 calendar days after receipt of that notice.

(b) The time limit in paragraph (a) of this section may be extended in the discretion of the Board of Appeals and Review, upon a showing by the complainant that he was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limit.  
[34 F.R. 5371, Mar. 10, 1969]

#### § 713.234 Appellate procedures.

The Board of Appeals and Review shall review the complaint file and all relevant written representations made to the board. The board may remand a complaint to the agency for further investigation or a rehearing if it considers that action necessary or have additional investigation conducted by Commission personnel. This subpart applies to any further investigation or rehearing resulting from a remand from the board. There is no right to a hearing before the board. The board shall issue a written decision setting forth its reasons for the decision and shall send copies thereof to the com-

plainant, his designated representative, and the agency. When corrective action is ordered, the agency shall report promptly to the board that the corrective action has been taken. The decision of the board is final and there is no further right to appeal.

[34 F.R. 5371, Mar. 10, 1969]

#### § 713.235 Review by the Commissioners.

The Commissioners may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(a) New and material evidence is available that was not readily available when the previous decision was issued;

(b) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy; or

(c) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

[34 F.R. 11537, July 12, 1969]

#### § 713.236 Relationship to other appeals.

When the basis of the complaint of discrimination because of race, color, religion, sex or national origin involves an action which is otherwise appealable to the Commission, the case, including the issue of discrimination, will be processed under the regulations appropriate to that appeal when the complainant makes a timely appeal to the Commission in accordance with those regulations.

[34 F.R. 5371, Mar. 10, 1969]

#### REPORTS TO THE COMMISSION

#### § 713.241 Reports to the Commission.

Each agency shall report to the Commission information concerning pre-complaint counseling and the status and disposition of complaints under this subpart at such times and in such manner as the Commission prescribes.

[34 F.R. 5371, Mar. 10, 1969]

#### Subpart C—Minority Group Statistics System

#### § 713.301 Applicability.

(a) This subpart applies (1) to military departments as defined in section

§ 713.302

Title 5—Administrative Personnel

102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof, including employees paid from nonappropriated funds, and (2) to those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the competitive service and to the employees in those positions.

(b) This subpart does not apply to aliens employed outside the limits of the United States.

[34 F.R. 5371, Mar. 19, 1969, as amended at 34 F.R. 14024, Sept. 4, 1969]

§ 713.302 Agency systems.

(a) Each agency shall establish a system which provides statistical employment information by race or national origin.

(b) Data shall be collected only by visual identification and shall be disclosed only in the form of gross statistics. An agency shall not collect or maintain any information of the race or national origin of individual employees except when an automated data processing system is used in accordance with standards and requirements prescribed by the Commission to insure individual privacy and the separation of that information from personnel records.

(c) Each system is subject to the following controls:

(1) Only those categories of race and national origin prescribed by the Commission may be used;

(2) Only the specific procedures for the collection and maintenance of data that are prescribed or approved by the Commission may be used;

(3) The Commission shall review the operation of the agency system to insure adherence to Commission procedures and requirements. An agency may make an exception to the prescribed procedures and requirements only with the advance written approval of the Commission.

(d) The agency may use the data only in studies and analyses which contribute affirmatively to achieving the objectives of the equal employment opportunity program. An agency shall not establish a quota for the employment of persons on the basis of race, color, religion, sex, or national origin.

(e) An agency shall report to the Commission on employment by race and na-

tional origin in the form and at such times as the Commission may require.

[34 F.R. 5371, Mar. 19, 1969, as amended at 34 F.R. 14024, Sept. 4, 1969]

Subpart D—Equal Opportunity Without Regard to Politics, Marital Status, or Physical Handicap

§ 713.401 Equal opportunity without regard to politics, marital status, or physical handicap.

(a) In appointments and position changes. In determining the merit and fitness of a person for competitive appointment or appointment by noncompetitive action to a position in the competitive service, an appointing officer shall not discriminate on the basis of the person's political affiliations, except when required by statute, or marital status, nor shall he discriminate on the basis of a physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

(b) In adverse actions and termination of probationers. An agency may not take an adverse action against an employee covered by Part 752 of this chapter, nor effect the termination of a probationer under Part 315 of this chapter (1) for political reasons, except when required by statute, (2) that is based on discrimination because of marital status or (3) for physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

[34 F.R. 5372, Mar. 19, 1969]

PART 715—NONDISCIPLINARY SEPARATIONS, DEMOTIONS, AND FURLOUGHS

Subpart A [Reserved]

Subpart B—Voluntary Separations

Sec.

715.201 Applicability.

715.202 Resignation.

SOURCE: The provisions of this Part 715 appear at 33 F.R. 12482, Sept. 4, 1968, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Voluntary Separations

AUTHORITY: The provisions of this Subpart B issued under 5 U.S.C. 1302, 3301, 3302, 7801, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218; E.O. 11222; 3 CFR, 1964-1968 Comp., p. 308.

§ 715.201 Applicability

This subpart applies to positions requested by executive departments and establishments of the Government, including Government controlled corporation portions of the legislative branches of the Federal Government and the government of the District of Columbia having positions in the competitive service.

§ 715.202 Resignation

(a) General. An employee may resign at any time, to date of his resignation, for reasons for resigning official records.

(b) Withdrawal of resignation. A resignation is binding on an employee after he has submitted it to the agency, in its discretion, the employee to withdraw at any time before effective.

PART 731—SUITABILITY

Subpart A—[Reserved]

Subpart B—Suitability

Sec.

731.201 Reasons for disqualification.

Subpart C—Suitability

731.301 Jurisdiction.

731.302 Actions against the Commission.

731.303 Disbarment.

Subpart D—Appeals and Eligibility

731.401 Reemployment eligibility of former Federal employees.

AUTHORITY: The provisions of Part 731 issued under 5 U.S.C. 10577; 3 CFR, 1954-1958 Comp., p. 218; E.O. 11222; 3 CFR, 1964-1968 Comp., p. 308, unless otherwise noted.

SOURCE: The provisions of Part 731 appear at 33 F.R. 12483, Sept. 4, 1968, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Suitability

Disqualification

§ 731.201 Reasons for disqualification

Subject to Subpart C of this part, the Commission may deny examination, deny appointment, and restrict an employee from employment.

one

in the form and at such a Commission may require. Mar. 19, 1969, as amended at Sept. 4, 1969]

# **-Equal Opportunity With-ard to Politics, Marital r Physical Handicap**

Equal opportunity without to politics, marital status, or lhandicap.

ppointments and position determining the merit and person for competitive ap- appointment by noncom- on to a position in the com- vice, an appointing officer criminate on the basis of the lical affiliations, except when licate, or marital status, nor criminate on the basis of a ldicap with respect to any duties of which may be effi- rmed by a person with the ldicap.

verse actions and termina- tioners. An agency may not erse action against an em- ed by Part 752 of this chap- t the termination of a pro- per Part 315 of this chapter, tical reasons, except when statute, (2) that is based on n because of marital status, ysical handicap with respect on the duties of which may performed by a person with handicap.

Mar. 19, 1969]

# **-NONDISCIPLINARY SEP- S, DEMOTIONS, AND HS**

bpart A [Reserved]

B—Voluntary Separations

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provisions of this Part 715 .R. 12482, Sept. 4, 1968, unless d.

art A [Reserved]

# **-Voluntary Separations**

The provisions of this Sub- under 5 U.S.C. 1302, 3301, 3302, 7; 3 CFR 1954-1958 Comp., p. 7; 3 CFR, 1964-1965 Comp., p.

## **§ 715.201 Applicability.**

This subpart applies to separation ac- tions requested by employees in the ex- ecutive departments and independent establishments of the Federal Govern- ment, including Government-owned or controlled corporations, and in those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the com- petitive service.

## **§ 715.202 Resignation.**

(a) *General.* An employee is free to resign at any time, to set the effective date of his resignation, and to have his reasons for resigning entered in his offi- cial records.

(b) *Withdrawal of resignation.* A res- ignment is binding on an employee once he has submitted it, except that the agency, in its discretion, may permit the employee to withdraw his resigna- tion at any time before it has become effective.

## **PART 731—SUITABILITY**

### **Subpart A—[Reserved]**

### **Subpart B—Suitability Disqualifications**

Sec.

731.201 Reasons for disqualification.

### **Subpart C—Suitability Rating Actions**

731.301 Jurisdiction.

731.302 Actions against employees by the Commission.

731.303 Debarment.

### **Subpart D—Appeals and Reemployment Eligibility**

731.401 Reemployment eligibility of certain former Federal employees.

**AUTHORITY:** The provisions of this Part 731 issued under 5 U.S.C. 8301, 3302, 7301, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, E.O. 11222; 3 CFR, 1964-1965 Comp., p. 806, unless otherwise noted.

**SOURCE:** The provisions of this Part 731 appear at 33 F.R. 12483, Sept. 4, 1968, unless otherwise noted.

### **Subpart A—[Reserved]**

### **Subpart B—Suitability Disqualifications**

§ 731.201 Reasons for disqualification.

Subject to Subpart C of this part, the Commission may deny an applicant examination, deny an eligible appoint- ment, and instruct an agency to remove

an appointee for any of the following reasons:

(a) Dismissal from employment for delinquency or misconduct;

(b) Criminal, infamous, dishonest, immoral, or notoriously disgraceful con- duct;

(c) Intentional false statement or de- ception or fraud in examination or ap- pointment;

(d) Refusal to furnish testimony as required by § 5.3 of this chapter;

(e) Habitual use of intoxicating bev- erages to excess;

(f) Reasonable doubt as to the loyalty of the person involved to the Govern- ment of the United States; or

(g) Any legal or other disqualification which makes the individual unfit for the service.

### **Subpart C—Suitability Rating Actions**

#### **§ 731.301 Jurisdiction.**

(a) *Appointments subject to investi- gation.* (1) In order to establish an ap- pointee's qualifications and suitability for employment in the competitive serv- ice, every appointment to a position in the competitive service is subject to in- vestigation by the Commission, except:

(i) Promotion;

(ii) Demotion;

(iii) Reassignment;

(iv) Conversion from career-condi- tional to career tenure;

(v) Appointment, or conversion to an appointment, made by an agency of an employee of that agency who has been serving continuously with that agency for at least one year in one or more positions in the competitive service under an appointment subject to investigation;

(vi) Reinstatement effected within one year from the date of separation from Federal civilian employment or from honorable separation from military serv- ice, provided the one-year, subject-to- investigation period applied to the previous appointment has expired; and

(vii) Transfer, provided the one-year, subject-to-investigation period applied to the previous appointment has expired.

(2) Appointments are subject to in- vestigation to continue the Commission's jurisdiction to investigate the qualifica- tions and suitability of an applicant after appointment and to authorize the Commission to require removal when it finds the appointee is disqualified for Federal employment. The subject-to- investigation condition may not be con- strued as requiring an employee to serve



§ 731.302

Title 5—Administrative Personnel

a new probationary or trial period or as extending the probationary or trial period of an employee.

(b) *Duration of condition.* The subject-to-investigation condition expires automatically at the end of 1 year after the effective date of appointment, except in a case involving intentional false statement or deception or fraud in examination or appointment.

§ 731.302 Actions against employees by the Commission.

(a) For a period of 1 year after the effective date of an appointment subject to investigation under § 731.301, the Commission may instruct an agency to remove an appointee when it finds that he is not qualified or is unsuitable for any of the reasons cited in § 731.201. Part 754 of this chapter does not apply to this action.

(b) Thereafter, the Commission may require the removal of an employee on the basis of intentional false statement or deception or fraud in examination or appointment. Part 754 of this chapter applies to this action.

(c) An action to remove an appointee or employee taken pursuant to an instruction by the Commission is not subject to Part 752 of this chapter. Part 752 of this chapter applies when removal or other disciplinary action covered by that part is initiated by an agency.

§ 731.303 Debarment.

When a person is disqualified for any reason named in § 731.201, the Commission, in its discretion, may deny that person examination for and appointment to a competitive position for a period of not more than 3 years from the date of determination of disqualification. On expiration of the period of debarment, the person who has been debarred may not be appointed to any position in the competitive service until his fitness for appointment has been redetermined by the Commission.

Subpart D—Appeals and Reemployment Eligibility

§ 731.401 Reemployment eligibility of certain former Federal employees.

(a) *Request for suitability determination.* When an employee has been removed by an agency on charges (other than security or loyalty) or has resigned on learning the agency planned to prefer charges, or while charges were pending, the former employee may request

the Commission to determine his eligibility for further employment in the competitive service, insofar as his suitability and fitness are concerned. The Commission shall consider the request only if the former employee:

(1) Has completed any required probationary period;

(2) Has basic eligibility for reinstatement; and,

(3) Includes a sworn statement with the request which sets forth fully and in detail the facts surrounding his removal or resignation.

(b) *Action by Commission.* (1) After appropriate consideration, including such investigation as the Commission considers necessary, the Commission shall inform the former employee whether it has found him suitable for further employment in the competitive service.

(2) If the former employee is found unsuitable and has had an opportunity to comment on the reasons for this finding, or has furnished them to the Commission, it may cancel his reinstatement eligibility if that eligibility resulted from his last Federal employment and was obtained through fraud. In addition, the Commission may prescribe a period of debarment from the competitive service not to exceed 3 years.

(c) *Time limits for submitting requests.* The Commission may consider a case under this section only if it is submitted to the Commission within 6 months after the date of separation, or 60 calendar days after the date of the last adverse decision as a result of an appeal, whichever is later. The Commission may extend this time limit on a showing by the former employee that circumstances beyond his control prevented him from filing his request within the prescribed period.

PART 732—PERSONNEL SECURITY AND RELATED PROGRAMS

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Security and Related Determinations

§ 732.401 Reemployment eligibility of certain former Federal employees.

(a) *Request.* A former employee who was terminated, or who resigned while suspended or while charges were pending,

from a department of the Government under executive order authority in the interest of the Government, may request the Commission to determine his eligibility for employment in the interest of the Government.

(b) *Action by the Commission.* The Commission shall will notify the former employee of the appropriate considerations necessary, whether employed in another department of the Government.

(2) If a former employee found unsuitable under had an opportunity to comment on the reasons for the action, the Commission may cancel his reinstatement eligibility if the eligibility resulted from his last Federal employment and was obtained through fraud, or the Commission may prescribe a period of debarment from the competitive service, not or both.

(5 U.S.C. 3301, 3302, 7312 10450; 3 CFR, 1949-1953 10577; 3 CFR, 1954-1958 F.R. 12484, Sept. 4, 1968]

PART 733—POLITICAL AND FEDERAL EMPLOYMENT

Subpart A—The Commission

GENERAL PROVISIONS

Sec.	
733.101	Definitions.
	PERMISSIBLE ACTION
733.111	Permissible activities.
	PROHIBITED ACTIONS
733.121	Use of official position.
733.122	Political management campaigning.
733.123	Prohibited activities in certain employment.
733.124	Political management campaigning; elections.

PROCEDURES

733.131	Investigation.
733.132	Charges.

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**Next 1 Page(s) In Document Exempt**

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# **EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT**

It has long been the policy of the United States Government to provide equal opportunity in Federal employment on the basis of merit and fitness and without discrimination because of race, color, religion, sex, or national origin. All recent Presidents have fully supported this policy, and have directed department and agency heads to adopt measures to make it a reality.

As a result, much has been accomplished through positive agency programs to assure equality of opportunity. Additional steps, however, are called for in order to strengthen and assure fully equal employment opportunity in the Federal Government.

NOW, THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

SEC. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

SEC. 3. The Civil Service Commission shall provide leadership and guidance to departments and agencies in the conduct of equal employment opportunity programs for the civilian employees of and applicants for employment within the executive departments and agencies in order to assure that personnel operations in Government departments and agencies carry out the objective of equal opportunity for all persons. The Commission shall review and evaluate agency program operations periodically, obtain such reports from departments and agencies as it deems necessary, and report to the President as appropriate on overall progress. The Commission will consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Order.

SEC. 4. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex, or na-



Title 3—Chapter II

E. O. 11479

tional origin. Agency systems shall provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 5. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out this Order and assure that the executive branch of the Government leads the way as an equal opportunity employer, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Order.

SEC. 6. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SEC. 7. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.



THE WHITE HOUSE,  
August 8, 1969.

E. O. 11374

Title 3--Chapter II

E. O. 11375

E. O. 11375

### Executive Order 11374

#### ABOLISHING THE MISSILE SITES LABOR COMMISSION AND PROVIDING FOR THE PERFORMANCE OF ITS FUNCTIONS

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. The Missile Sites Labor Commission is hereby abolished, and its functions and responsibilities are transferred to the Federal Mediation and Conciliation Service.

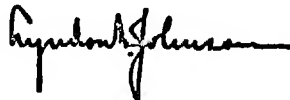
SEC. 2. The Director of the Federal Mediation and Conciliation Service shall establish within the Federal Mediation and Conciliation Service such procedures as may be necessary to provide for continued priority for resolution of labor disputes or potential labor disputes at missile and space sites, and shall seek the continued cooperation of manufacturers, contractors, construction concerns, and labor unions in avoiding uneconomical operations and work stoppages at missile and space sites.

SEC. 3. The Department of Defense, the National Aeronautics and Space Administration, and other appropriate government departments and agencies shall continue to cooperate in the avoidance of uneconomical operations and work stoppages at missile and space sites. They shall also assist the Federal Mediation and Conciliation Service in the discharge of its responsibilities under this order.

SEC. 4. All records and property of the Missile Sites Labor Commission are hereby transferred to the Federal Mediation and Conciliation Service.

SEC. 5. Any disputes now before the Missile Sites Labor Commission shall be resolved by the personnel now serving as members of the Missile Sites Labor Commission under special assignment for such purposes by the Director of the Federal Mediation and Conciliation Service.

SEC. 6. Executive Order No. 10946 of May 26, 1961, is hereby revoked.



THE WHITE HOUSE,  
October 11, 1967.

### Executive Order 11375

#### AMENDING EXECUTIVE ORDER NO. 11246, RELATING TO EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

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Executive Order a program of equal ment, employment employment under of race, creed, color

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NOW, THEREI President of the U United States, it is tember 24, 1965, be a

(1) Section 101 ernment employer

"SEC. 101. It is States to provide e qualified persons, t of race, color, religi realization of equal tinuing program in of equal opportunit policy and practice."

(2) Section 104 o

"SEC. 104. The ( prompt, fair, and i crimination in Feder sex or national origi shall include at least ment or agency and Commission."

(3) Paragraphs ( visions in section 20 employment by Go revised to read as foll

"(1) The contract applicant for empl national origin. The that applicants are c employment, withou national origin. Suc following: employn ment or recruitment

130 F.R. 12319; 3 CFR.

E.O. 11375

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Title 3--Chapter II

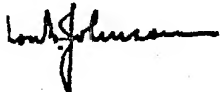
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## ING TO EQUAL

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The Congress, by enacting Title VII of the Civil Rights Act of 1964, enunciated a national policy of equal employment opportunity in private employment, without discrimination because of race, color, religion, sex or national origin.

Executive Order No. 11246<sup>1</sup> of September 24, 1965, carried forward a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment under Federally assisted construction contracts regardless of race, creed, color or national origin.

It is desirable that the equal employment opportunity programs provided for in Executive Order No. 11246 expressly embrace discrimination on account of sex.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered that Executive Order No. 11246 of September 24, 1965, be amended as follows:

(1) Section 101 of Part I, concerning nondiscrimination in Government employment, is revised to read as follows:

"SEC. 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice."

(2) Section 104 of Part I is revised to read as follows:

"SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission."

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay

<sup>1</sup> 30 F.R. 12319; 3 CFR, 1964-1965 Comp., p. 339.

E. O. 11376

Title 3--Chapter II

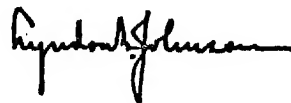
E. O. 11376

or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin." (4) Section 203 (d) of Part II is revised to read as follows:

"(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require."

The amendments to Part I shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.



THE WHITE HOUSE,  
October 13, 1967.

**Executive Order 11376**

**AMENDING EXECUTIVE ORDER NO. 11022, RELATING TO THE  
PRESIDENT'S COUNCIL ON AGING**

By virtue of the authority vested in me as President of the United States, it is ordered that Executive Order No. 11022 of May 14, 1962, entitled "Establishing the President's Council on Aging," be, and it is hereby, amended by substituting for subsection (b) of section 1 thereof the following:

<sup>1</sup> 27 F.R. 4659; 3 CFR, 1959-63 Comp., p. 602.

E. O. 11377

"(b) The Council on Education, and Welfare, the Department of Agriculture, the Secretary of Urban Development, the Department of Transportation, the Secret Service Commission, the Director of the Office

THE WHITE HOUSE  
October

**PROVIDING FOR TA  
ESTIMATED**

By virtue of the authority vested in me as President of the United States, it is hereby ordered that, including section 1332), it is hereby ordered

1. In order to assist in the implementation of the provisions of the United States Tariff Commission regarding to whiskbroon 750.28, inclusive, of the provided for in items 7 shall annually report to the calendar year, its judgment of each such kind of calendar year, together with the Commission under the calendar year 1967, and 1965, together with the

2. At the time of its this order for 1968, and described in paragraph available information of brooms which it contains paragraph 1 and, if practicable of such other brooms.

THE WHITE HOUSE,  
October 23

SECTION 1. The following office and position is placed in level IV of the Federal Executive Salary Schedule:

(1) Special Assistant to the Secretary (for Enforcement), Treasury Department.

LYNDON B. JOHNSON

THE WHITE HOUSE,  
September 16, 1965.

#### Executive Order 11245

#### PLACING A POSITION IN LEVEL V OF THE FEDERAL EXECUTIVE SALARY SCHEDULE

By virtue of the authority vested in me by subsection (f) of Section 303 of the Government Employees Salary Reform Act of 1964, and as President of the United States, it is ordered as follows:

SECTION 1. The following office and position is placed in level V of the Federal Executive Salary Schedule:

(1) Commissioner on Aging, Department of Health, Education, and Welfare.

LYNDON B. JOHNSON

THE WHITE HOUSE,  
September 16, 1965.

#### Executive Order 11246

#### EQUAL EMPLOYMENT OPPORTUNITY

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

#### PART I—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SEC. 102. The head of each executive department and agency shall establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 101.

SEC. 103. The Civil Service Commission shall supervise and provide leadership and guidance in the conduct of equal employment opportunity programs for the civilian employees of and applications

E. O. 11246

Title 3--Chapter II

E. O. 11246

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for employment within the executive departments and agencies and shall review agency program accomplishments periodically. In order to facilitate the achievement of a model program for equal employment opportunity in the Federal service, the Commission may consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Part.

SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, creed, color, or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 105. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

## PART II--NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

### SUBPART A--DUTIES OF THE SECRETARY OF LABOR

SEC. 201. The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

### SUBPART B--CONTRACTORS' AGREEMENTS

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under

Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the con-

E. O. 11246

Title 3--Chapter II

E. O. 11246

tractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

SUBPART C--POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

SEC. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of



E. O. 11246

Title 3--Chapter II

E. O. 11246

Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

#### SUBPART D—SANCTIONS AND PENALTIES

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:

E. O. 11246

Title 3--Chapter II

E. O. 11246

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(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the non-discrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under Subsection (a) (2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a) (5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

Sec. 210. Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

E. O. 11246

Title 3--Chapter II

E. O. 11246

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209(a) (6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

#### SUBPART E—CERTIFICATES OF MERIT

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

#### PART III—NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations there-

E. O. 11246

Title 3--Chapter II

E. O. 11246

E. O.

under, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303. (a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

O. 11246

E. O. 11246

Title 3--Chapter II

E. O. 11246

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the administering department or agency.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

#### PART IV—MISCELLANEOUS

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

E. O. 11247

Title 3--Chapter II

E. O. 11247

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

LYNDON B. JOHNSON

THE WHITE HOUSE,  
*September 24, 1965.*

✓ **Executive Order 11247**

**PROVIDING FOR THE COORDINATION BY THE ATTORNEY GENERAL OF  
ENFORCEMENT OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

WHEREAS the Departments and agencies of the Federal Government have adopted uniform and consistent regulations implementing Title VI of the Civil Rights Act of 1964 and, in cooperation with the President's Council on Equal Opportunity, have embarked on a coordinated program of enforcement of the provisions of that Title;

WHEREAS the issues hereafter arising in connection with coordination of the activities of the departments and agencies under that Title will be predominantly legal in character and in many cases will be related to judicial enforcement; and

WHEREAS the Attorney General is the chief law officer of the Federal Government and is charged with the duty of enforcing the laws of the United States:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

SECTION 1. The Attorney General shall assist Federal departments and agencies to coordinate their programs and activities and adopt consistent and uniform policies, practices, and procedures with respect to the enforcement of Title VI of the Civil Rights Act of 1964. He may promulgate such rules and regulations as he shall deem necessary to carry out his functions under this Order.

SEC. 2. Each Federal department and agency shall cooperate with the Attorney General in the performance of his functions under this Order and shall furnish him such reports and information as he may request.

SEC. 3. Effective 30 days from the date of this Order, Executive Order No. 11197 of February 5, 1965, is revoked. Such records of the President's Council on Equal Opportunity as may pertain to the enforcement of Title VI of the Civil Rights Act of 1964 shall be transferred to the Attorney General.

E. O. 11248

Title 3--Chapter II

E. O. 11249

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SEC. 4. All rules, regulations, orders, instructions, designations and other directives issued by the President's Council on Equal Opportunity relating to the implementation of Title VI of the Civil Rights Act of 1964 shall remain in full force and effect unless and until revoked or superseded by directives of the Attorney General.

LYNDON B. JOHNSON

THE WHITE HOUSE,  
*September 24, 1965.*

#### Executive Order 11248

#### PLACING CERTAIN POSITIONS IN LEVELS IV AND V OF THE FEDERAL EXECUTIVE SALARY SCHEDULE

By virtue of the authority vested in me by subsection (f) of Section 303 of the Government Employees Salary Reform Act of 1964, and as President of the United States, it is ordered as follows:

SECTION 1. The following offices and positions are placed in Level IV of the Federal Executive Salary Schedule:

(1) Special Assistant to the Secretary (for Enforcement), Treasury Department.

(2) Principal Deputy Director of Defense Research and Engineering, Department of Defense.

SEC. 2. The following offices and positions are placed in Level V of the Federal Executive Salary Schedule:

(1) Commissioner on Aging, Department of Health, Education, and Welfare.

(2) Principal Deputy Assistant Secretary of Defense (International Security Affairs), Department of Defense.

SEC. 3. Executive Order No. 11244 and Executive Order No. 11245, both dated September 16, 1965, are hereby superseded.

LYNDON B. JOHNSON

THE WHITE HOUSE,  
*October 10, 1965.*

#### Executive Order 11249

#### AMENDING REGULATIONS RELATING TO THE SAFEGUARDING OF VESSELS, HARBORS, PORTS, AND WATERFRONT FACILITIES OF THE UNITED STATES

By virtue of the authority vested in me by the Act of August 9, 1950, 64 Stat. 427, which amended section 1 of title II of the Act of June 15, 1917, 40 Stat. 220 (50 U.S.C. 191), and as President of the United States, I hereby prescribe the following amendments of the regulations prescribed by Executive Order No. 10173 of October 18, 1950, as amended by Executive Order No. 10277 of August 1, 1951,



S 16802

## CONGRESSIONAL RECORD — SENATE

September 30, 1970

80-20.7 Effective date.

This part is effective June 9, 1970. Signed at Washington, D.C. this 2nd day of June, 1970.

GEORGE P. SHULTZ,  
Secretary of Labor.  
JOHN L. WILKS,

Director, Office of Federal Contract  
Compliance.

## STATUS OF UNFINISHED BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business, Senate Joint Resolution 1, not be laid before the Senate at 12 o'clock and that the Senate continue considering the pending business.

The PRESIDING OFFICER. Without objection, it is so ordered.

## EQUAL OPPORTUNITIES ENFORCEMENT ACT

The Senate continued with the consideration of the bill (S. 2453) to further promote equal employment opportunities for American workers.

## AMENDMENT NO. 976

Mr. DOMINICK. Mr. President, I call up my amendment No. 976 and ask that it be stated.

The PRESIDING OFFICER (Mr. Hollings). The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. DOMINICK. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the Record.

The text of the amendment is as follows:

On page 53, beginning with line 17, strike out all through page 55, line 20.

On page 55, line 21, strike out "Sec. 11." and insert in lieu thereof "Sec. 10."

Mr. DOMINICK. Mr. President, a brief explanation of the amendment is in order because it was not read in full and without looking at the bill the amendment might not mean too much. The bill as now presented to the Senate for debate provides for transfer of all discrimination cases for Federal employees from the Civil Service Commission to the EEOC. This involves 3 million people. In addition, the bill also transfers within the jurisdiction of the EEOC all State and local employees, which consists of another 10 million people. Over and beyond that, the bill reduces from 25 to 8 the number of requisite employees an employer must have, in order to be subject to the bill. We estimate that this is another 6½ million people. So, we are, in effect, saying that we will increase the load on the EEOC by 19½ million people at a minimum.

Mr. President, we have already heard the discussions made by the distinguished Senator from New York and the distinguished Senator from New Jersey, pointing out that the Commission is already 2 years behind in trying to investigate and conclude the complaints which have been made under its existing jurisdiction.

Now we are considering this bill, with all good heart and with all good intent, a bill which I think has a great deal of merit in a number of places—and proposing to add to the committee's jurisdiction a block of new complaints that will arise from the 19.5 million additional people which will be placed within its jurisdiction.

It seems obvious to me that the work of the commission will be further bogged down and, if I may say so, this is borne out quite conclusively by the testimony of the chairman of the commission, as well as by testimony of other administration spokesmen who came before the committee.

With respect to this particular bill, what I am simply saying is that the Civil Service Commission now has jurisdiction over Federal employees, and that is where the jurisdiction should remain.

We should not have a personnel situation or a personnel grievance committee or a personnel management for Federal employees only on race, sex, color, and national origin. That would be the effect of the bill as now written. The bill provides that all the usual matters of grievance of Federal employees in connection with working conditions, with jobs, with promotions, with every aspect of personnel relationship, shall remain within the Civil Service Commission. But the bill excepts the charges of discrimination on the grounds I have mentioned.

It seems to me that the changes proposed by the bill will not render any good service to Federal employees but, in fact, will do them a disservice and seriously impair the President's program on equal employment.

President Nixon issued an Executive Order No. 11478 in August of 1969, a few days before the Civil Service Commission Chairman, Robert E. Hampton, testified before the Labor Subcommittee. That Executive order embodies a new concept, that of closely integrating equal employment and personnel management. It is based on the premise that to be effective, equal employment opportunities must be an integral part of the personnel-management system and must be built into it the every day actions taken by managers on the job.

I would think, Mr. President, that this would be self-evident when we think about it. How can we build in proper personnel management if we are going to take out the single element of discrimination and say, "Oh, no, that is on a different plane with a different commission for enforcement and personnel managers shall have no voice in it."

It would seem to me that this would be a grave mistake because progress has been made under Executive Order 11478 in assuring equal opportunity in the Federal service.

Heaven knows, we are not through with discrimination. There is still discrimination—we all know it—and we are working on it. The question is: "Does the bill provide a mechanism for really trying to solve the problem?"

The results of a survey made as of November 30, 1969, shows an upward movement of minority groups in the Federal personnel system. For example, be-

tween 1967 and 1969, Negro employment rose from 14.9 percent to 15 percent of the total work force.

However, Negroes in GS-9 through 11 rose from 12,631 to 16,318, a 29-percent increase; and in grades 12 through 15 from 4,589 to 6,448, a 40-percent increase.

As I noted, Chairman Hampton testified just a few days after issuance of that Executive order. Since that time, the following substantive changes to enhance equal opportunity within the Government have been taken by the Civil Service Commission.

First, a new office has been established within the Civil Service Commission to provide leadership to government agencies;

Second, full-time equal employment opportunity representatives have been established in each of the Commission's 10 regional offices to carry equal employment opportunities directly to field installations;

Third, for the first time, agencies have been authorized to maintain statistics on minority employment on automatic data processing equipment and to monitor progress on a current basis.

One may recall that in prior years, it was considered discriminatory in and of itself to enter on anyone's application or job record what nationality, creed, color, or race he might be.

The fourth substantive change is that government-wide surveys of minority employment are being made every 6 months instead of every other year; and Fifth, agencies have been directed to include evaluation of performance on equal employment opportunity in the rating of their supervisory personnel.

This is very significant. We have to evaluate supervisory personnel to determine whether they are directly or indirectly exercising discrimination in a field prohibited under our law.

The sixth substantive change is that an incentive awards program to stimulate supervisors, managers, and others for exceptional performance in this area has been instituted;

Seventh, new training programs have been established both on an individual and agency basis. These programs are significant in that it is the individual manager and supervisor who eventually will be the ones to make equal employment a reality because of their responsibility for hiring, developing, and advancing employees.

A number of other steps have been taken. Agencies have been directed to develop affirmative action plans, with specific details, and the Commission has already returned a large proportion of these to agencies for shoring up or for lacking the desired specificity.

The Commission has released to agencies, guidelines on ways to assure upward mobility for lower level employees. This is particularly important because around 20 percent of Federal employees are minorities, but those concentrated in the lower grades must be provided opportunity for the necessary training so they can qualify to move up the ladder.

The Commission is strengthening its inspection program aimed at agency



September 30, 1970

## CONGRESSIONAL RECORD -- SENATE

S16801

few, if any, women" have been admitted into management training programs.

The guidelines state that an "important element of affirmative action shall be a commitment to include women candidates in such programs."

Secretary Shultz and John L. Wilks, Director of the Office of Federal Contract Compliance (OFCC), signed the document establishing the guidelines.

The guidelines will be used by Federal contracting agencies in their compliance activities under the supervision of OFCC. They were developed by OFCC and by a Labor Department-appointed panel which heard the opinions of companies, women's group representatives, and other interested persons.

The panel included Mrs. Koontz; Miss Elizabeth Kuch, Commissioner of the Equal Employment Opportunities Commission; Robert D. Moran, Administrator of the Labor Department's Wage-House and Public Contracts Divisions; and Mrs. Grace Gill Olivarez of Phoenix, Arizona.

#### TITLE 41--PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

##### CHAPTER 60--OFFICE OF FEDERAL CONTRACT COMPLIANCE EQUAL EMPLOYMENT OPPORTUNITY DEPARTMENT OF LABOR

###### Part 60-20--Sex discrimination guidelines

On January 17, 1969, proposed guidelines were published at 34 F.R. 758 to amend Chapter 60 of Title 41 of the Code of Federal Regulations by adding a new Part 60-20. Persons interested were given an opportunity to file written data, views or argument concerning the proposals. Also, public hearings were held on August 4, 5, and 6, to receive oral presentations from interested persons.

Having considered all relevant material, 41 CFR Chapter 60 is hereby amended by adding a new Part 60-20 to read as follows:

###### Part 60-20--Sex discrimination guidelines

- 60-20.1 Title and Purpose.
- 60-20.2 Recruitment and Advertisement.
- 60-20.3 Job Policies and Practices.
- 60-20.4 Seniority Systems.
- 60-20.5 Discriminatory Wages.
- 60-20.6 Affirmative Action.
- 60-20.7 Effective Date.

**AUTHORITY:** The provisions of this Part 60-20 issued Under Sec. 201, E. O. 11246, 30 F.R. 12319, and E. O. 11375, 32 F.R. 14303.

###### 60-20.1 Title and Purpose.

The purpose of the provisions in this part is to set forth the interpretations and guidelines of the Office of Federal Contract Compliance regarding the implementation of Executive Order 11375 for the promotion and insuring of equal opportunities for all persons employed or seeking employment with Government contractors and subcontractors or with contractors and subcontractors performing under Federally-assisted construction contracts, without regard to sex. Experience has indicated that special problems related to the implementation of Executive Order 11375 require a definitive treatment beyond the terms of the Order itself. These interpretations are to be read in connection with existing regulations, set forth in 41 CFR Chapter 60, Part 1.

###### 60-20.2 Recruitment and Advertisement.

(a) Employers engaged in recruiting activity must recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification.

(b) Advertisement in newspapers and other media for employment must not express a sex preference unless sex is a bona fide occupational qualification for the job. The placement of an advertisement in columns headed "Male" or "Female" will be considered an expression of a preference,

limitation, specification or discrimination based on sex.

###### 60-20.3 Job Policies and Practices.

(a) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of sex. If the employer deals with a bargaining representative for his employees and there is a written agreement on conditions of employment, such agreement shall not be inconsistent with these guidelines.

(b) Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform, unless sex is a bona fide occupational qualification. (Note: In most Government contract work there are only limited instances where valid reasons can be expected to exist which would justify the exclusion of all men or all women from any given job.)

(c) The employer must not make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. In the area of employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" the employer will not be considered to have violated these guidelines if his contributions are the same for men and women or if the resulting benefits are equal.

(d) Any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, an employer must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex.

(e) The employer's policies and practices must assure appropriate physical facilities to both sexes. The employer may not refuse to hire men or women, or deny men or women a particular job because there are no restroom or associated facilities, unless the employer is able to show that the construction of the facilities would be unreasonable for such reasons as excessive expense or lack of space.

(f) An employer must not deny a female employee the right to any job that she is qualified to perform in reliance upon a State "protective" law. For example, such laws include those which prohibit women from performing in certain types of occupations (e.g., a bartender or a core-maker); from working at jobs requiring more than a certain number of hours; and from working at jobs that require lifting or carrying more than designated weights.

Such legislation was intended to be beneficial, but, instead, has been found to result in restricting employment opportunities for men and/or women. Accordingly, it cannot be used as a basis for denying employment or for establishing sex as a bona fide occupational qualification for the job.

(g) Women shall not be penalized in their conditions of employment because they require time away from work on account of childbearing. When, under the employer's leave policy the female employee would qualify for leave, then childbearing must be considered by the employer to be a justification for leave of absence for female employees for a reasonable period of time. For example, if the female employee meets the equally applied minimum length of service requirements for leave time, she must be granted a reasonable leave on account of childbearing. The conditions applicable to her leave (other than the length thereof) and to her return to employment, shall be in accordance with the employer's leave policy.

If the employer has no leave policy, childbearing must be considered by the employer to be a justification for a leave of absence for a female employee for a reasonable period of time. Following childbirth, and upon signifying her intent to return within a reasonable time, such female employee shall be reinstated to her original job or to a position of like status and pay, without loss of service credits.

(h) The employer must not specify any differences for male and female employees on the basis of sex in either mandatory or optional retirement age.

(i) Nothing in these guidelines shall be interpreted to mean that differences in capabilities for job assignments do not exist among individuals and that such distinctions may not be recognized by the employer in making specific assignments. The purpose of these guidelines is to insure that such distinctions are not based upon sex.

###### 60-20.4 Seniority system

Where they exist, seniority lines and lists must not be based solely upon sex. Where such a separation has existed, the employer must eliminate this distinction.

###### 60-20.5 Discriminatory wages

(a) The employer's wages schedules must not be related to or based on the sex of the employees. (Note: The more obvious cases of discrimination exist where employees of different sexes are paid different wages on jobs which require substantially equal skill, effort and responsibility and are performed under similar working conditions.)

(b) The employer may not discriminatorily restrict one sex to certain job classifications. In such a situation, the employer must take steps to make jobs available to all qualified employees in all classifications without regard to sex. (Example: An electrical manufacturing company may have a production division with three functional units: one (assembly) all female; another (wiring), all male; and a third (circuit boards), also all male. The highest wage attainable in the assembly unit is considerably less than that in the circuit board and wiring units. In such case the employer must take steps to provide qualified female employees opportunity for placement in job openings in the other two units.)

(c) To avoid overlapping and conflicting administration the Director will consult with the Administrator of the Wage and Hour Administration before issuing an opinion on any matter covered by both the Equal Pay Act and Executive Order 11246, as amended by Executive Order 11375.

###### 60-20.6 Affirmative action.

(a) The employer shall take affirmative action to recruit women to apply for those jobs where they have been previously excluded. (Note: This can be done by various methods. Examples include: (1) including in itineraries of recruiting trips women's colleges where graduates with skills desired by the employer can be found, and female students of co-educational institutions and (2) designing advertisements to indicate that women will be considered equally with men for jobs.)

(b) Women have not been typically found in significant numbers in management. In many companies management trainee programs are one of the ladders to management positions. Traditionally, few, if any, women have been admitted into these programs. An important element of affirmative action shall be a commitment to include women candidates in such programs.

(c) Distinctions based on sex may not be made in other training programs. Both sexes should have equal access to all training programs and affirmative action programs should require a demonstration by the employer that such access has been provided.

September 30, 1970

## CONGRESSIONAL RECORD — SENATE

S 16803

equal employment opportunity programs and is requiring agencies to undertake self-evaluation programs and to provide progress reports.

The Commission is working on the development of a cooperative education program with predominately Negro colleges to work out plans so that the work-study program will reach minority students and encourage them to come into the Federal Government.

As the central personnel agency, the Commission is in the best possible position to get to the heart of equal employment opportunity in the Federal service, and it is reviewing all its testing devices to assure that its examinations are a valid basis for selection of employees.

The Civil Service Commission feels it must take affirmative action to achieve equal employment opportunity and cannot rely upon complaints to point out problem areas. EEOC is necessarily complaint orientated.

That is not to say that the Civil Service Commission does not handle complaints. In July 1969, it installed a completely revised complaint procedure which provides for informal counseling for employees to resolve their problems at the lowest possible level, and this has worked out well. It has cut in half the number of formal complaints and has resulted in a significant increase in the number of corrective actions taken where employees have brought their problems to counselors for action. Third-party appeals examiners are provided where a complaint reaches the formal hearing stage so that a complaint is heard by a person having no connection with the agency involved in the dispute. This service, which the Civil Service Commission already provides, is essentially what the EEOC could provide if it had responsibility for the Federal program.

In addition, the direct coverage of Federal employees will add some 3 million employees to the work force covered by title VII. It does not make sense to remove this large a number of employees from the coverage of a workable, ongoing program where their rights are receiving adequate protection and to place them under an administrative process already as burdened as the EEOC is today.

Mr. President, I think it would be helpful at this point in the Record to indicate what some of the witnesses before our committee said on this particular subject. First I will turn to page 51 of the hearings record where we have a statement on that page from Mr. William Brown, who was chairman of the Equal Employment Opportunity Commission, not chairman of the Civil Service Commission.

This is what he said, talking about the executive order which I have just mentioned in my previous statement.

In the context of this significant step forward, it would not be desirable to transfer jurisdiction over these matters from the Civil Service Commission to the Equal Employment Opportunity Commission, especially if EEOC is now to assume cognizance over the employment practices of State and local governments, and employers of 8 or more persons. The added burden would simply be too great.

A better course would be to afford the Civil Service Commission the opportunity to implement the new Order until such time as a reasonable assessment of its performance can be made, and if necessary, alternative systems considered.

That testimony was given before the committee on August 11, 1969. Since that time, as I have pointed out, the Civil Service Commission has implemented the order and has gone forward with procedures and systems which would eliminate discrimination as rapidly as possible. It will take quite a while to get it all done, even though we would all like to get it done overnight. The Civil Service Commission is really moving ahead.

Mr. President, at this point I would like to read a few more statements from the record. First of all I will refer to the statement of Mr. Hampton, who was Chairman of the Civil Service Commission. His testimony starts at page 127 and can be read by all Senators when they get a chance. However, I want to emphasize a couple of things.

At the bottom of page 128, Mr. Hampton said:

That progress is demonstrable and is probably greater than in any previous comparable period. At the end of 1967 (the latest date for which figures are available), almost one-fifth of total Federal employment was minority group. This was one-half million jobs filled by minority Americans. Also, the non-white proportion of the Federal work force was approximately 16 percent compared with 10.8 percent of nonwhites in the work force generally.

Turning to page 132 of his testimony, he said:

Section 717 (a) and (b) of S. 2453 raise, in my judgment, serious legal questions which involve the authority of the Civil Service Commission under the Civil Service Act. The Civil Service Commission has statutory responsibility in connection with the employment process in the Federal Government and this makes it impractical to place oversight responsibility for equal employment in another agency.

That is the point I brought up at the very beginning: How difficult and complex this makes the situation as far as the Civil Service Commission is concerned.

He goes on to say:

But, aside from the legal questions, the transfer of responsibility for equal employment to EEOC is bad in principle for the reasons I have cited.

The EEOC is necessarily complaint oriented. The recipient and adjudication of complaints of discrimination is an important aspect of assuring equal employment opportunity, but it is far from the total program. Affirmative action—the moving out by agency heads and their managers to take the steps necessary to make equal employment opportunity a reality in every aspect of personnel operations—is the road to meaningful equal employment opportunity.

Then, he goes on to point out what the Commission has done toward achieving these goals.

Mr. President, a question was raised in committee as to whether or not any of the minority groups were in the upper echelon of the Federal Government. This question was raised by the Senator

from New Jersey. The question appears on page 135 and is replied to by Mr. Hampton on page 136.

In the first place, we have a minority commissioner for the first time in the eighty-six year history of this agency.

Secondly, I have an assistant for Equal Opportunity. He is sitting here on my right.

He then submits the study that was made. I call the attention of my colleagues to the study to show the proposed actions and positive recommendations that were made from that study which have now been implemented since 1969.

In short, what I am saying at the present time is that we have a lot of problems in trying to solve discrimination cases. As the manager of the bill knows full well I have been a very strong supporter of legislation on behalf of civil rights ever since I have held public office. There are an enormous number of problems connected with it, but one of them is the day-by-day dealings between people.

Where there is responsibility in a Commission, it has line authority from itself down to its various branches throughout the country. It seems to me they should have not only the right but also the responsibility of following through on discrimination cases. The matter was spelled out carefully in the 1964 act and great strides and great steps have been taken along this line since that time, and, as a matter of fact, since President Nixon took office.

I do not see how there can be a separation of all the personnel functions that go into the vast Federal service from the question of whether or not someone, because of race, creed, sex, color, or national origin, has been discriminated against. It just does not make any sense to me. When we have the chairman of the EEOC and the chairman of the Civil Service Commission both testifying it should not be transferred, why in the world do we go forward and do it?

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. WILLIAMS of New Jersey. Mr. President, very briefly, with great respect for the interest and concern of the Senator from Colorado in those matters where there is a question of enforcement of safety and health requirements of law, I do find that it is somewhat surprising for the Senator from Colorado to be advocating here that all of the aspects of the requirements of law be contained within one agency of our Government, the Civil Service Commission.

Here we have a mandate of law that states there shall be no discrimination for various reasons. That is a mandate that goes to the Civil Service Commission. When it comes to the enforcement of that mandate, as it is now, charges of discrimination can work up within the Civil Service Commission and be investigated, prosecuted, and judged, all within the Civil Service Commission.

I have had the great pleasure of listening to the Senator from Colorado as he analyzed the problems of being the investigator, the prosecutor, and the judge,

S 16804

## CONGRESSIONAL RECORD — SENATE

September 30, 1970

this, in a sense, is part of what we are dealing with here.

I am not dogmatic in any degree to say that should not be part of the line of authority, but it does come as a surprise from the Senator from Colorado that this is the approach. Beyond that it would seem to me if this transfer does take place to the Equal Opportunity Commission, in terms of the consideration of charges of discrimination, the whole hearing process, and the basic quasi-judicial decisions would be made for or all employees coming under this law, and here would reside in one place the wisdom and the expertise to solve equal employment problems.

There is a great deal to be said for the affirmative thrust of the Civil Service Commission in the elimination of any aspect of discrimination, and the executive orders call for affirmative action in this regard. There is nothing antithetical about a transfer of the quasi-judicial part of the investigation, hearing, and decision with that affirmative action and responsibility.

Section 715(b) clearly provides that:

The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions.

Under the rules and authority of the rulemaking provision, clearly the EEOC can provide for the program of affirmative action that deals with the elimination of discrimination in the Federal employment establishment.

The authority will reside in the EEOC to delegate to the Civil Service Commission such functions under this act as it desires.

I will say that there is a transitional period of 1 year before the effective date of the transfer from the Civil Service Commission to the EEOC. So there is that period of time for the adjustment. The second opportunity for adjustment is under the rulemaking authority of the EEOC.

Mr. President, I yield the floor.

Mr. DOMINICK. Mr. President, I just want to make a few comments, and then perhaps ask for a quorum call to see if we can have enough Senators present to have the yeas and nays ordered.

I am sorry, but not surprised, that the manager of the bill does not want to accept the amendment. I think he is making a mistake, and I think it is a fundamental mistake.

If Senators will look at section 715 of the bill, which my amendment would strike, it reads:

All personnel actions affecting employees or applications for employment . . . in military departments . . . in executive agencies . . . and in those portions of the government of the District of Columbia, and the legislative and judicial branches of the Federal Government having positions in the competitive service, shall be made free from any discrimination based on race, color, religion, sex, or national origin.

That is great. That is exactly what we want to do. There is no doubt about it whatsoever.

Subsection (b) then goes on to say, however:

The Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder . . .

I have never seen anything that is clearer than this saying that the EEOC is taking over primary responsibility in the personnel field for 3 million Federal employees who are already under the Civil Service Commission.

It can do nothing but create a clash between the two commissions. It can do nothing but interfere with the practical working operations of each employee, whether it be in an executive agency, a judicial agency, a legislative agency, or the military.

Why in the world should we take an ongoing program and say, "You are out, Civil Service Commission; we are going to put it in a new one that already is two years behind" and say further that the new Commission is going to do any good insofar as providing protection for those who are being discriminated against is concerned, I cannot understand.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. DOMINICK. I am happy to yield.

Mr. ERVIN. I notice this language in the amendment on page 26, beginning on line 11: The term "employer" does not include the United States.

Mr. DOMINICK. That used to be in the 1964 Civil Service Act.

Mr. ERVIN. Yes. Do I understand the Senator from Colorado correctly as saying that, under the proposed transfer of power provided by the bill from the Civil Service Commission to the EEOC, that EEOC would have the power to process and decide complaints of discrimination in the civil service work force of the Federal Government?

Mr. DOMINICK. The Senator is correct.

Mr. ERVIN. The Senator from North Carolina is also correct, is he not, in saying that this would in effect be a proceeding either by an employee or an applicant for employment against a department or agency of the United States?

Mr. DOMINICK. Yes. It would be brought up by a complaint from an employee against a particular practice or a particular person, which would be filed with the EEOC.

Mr. ERVIN. Would not the same be true of an applicant for employment in the U.S. Government who would claim he was denied employment for one of the reasons covered by the 1964 Civil Rights Act?

Mr. DOMINICK. The Senator is correct, because it also refers to applicants for employment.

Mr. ERVIN. I direct the attention of the Senator to page 33, beginning with line 3. I will read this language for the purpose of laying a premise for a question:

"(2) After the Commission issues a complaint, it may, upon application by the person aggrieved, compensate such person for reasonable expenses in connection with the preparation for the hearing and in connection with participation in the hearings, including the cost of expert witness fees, transcripts, and copying. Not more than \$1,000 will be allocated in any single proceeding to carry out the provisions of this paragraph. The Commission may perform the services for which the aggrieved party would otherwise seek reasonable expenses under this subsection.

If the bill should pass making the proposed transfer of jurisdiction of complaints of personnel already in the Government service or complaints of applicants for employment in the Government from the Civil Service Commission to the EEOC, then that would bring into play the section I have just read; would it not?

Mr. DOMINICK. I think it would, but I will yield to the manager of the bill on that point.

Mr. WILLIAMS of New Jersey. No; that does not apply. Those provisions of the bill that deal with the transfer of the discrimination questions now in the Civil Service Commission do not incorporate the earlier parts of title VII of the act.

Mr. ERVIN. Would the Senator from New Jersey be so kind as to inform the Senator from North Carolina what provision of the bill makes that plain, because, frankly, I have been so busy that I did not get a chance to read the bill until last night?

Mr. WILLIAMS of New Jersey. We will try to find that with precision.

Mr. ERVIN. It would seem to me this is clearly covered by the enforcement powers. I am not an expert on the bill, but I do want to be informed. I could not find anything that would distinguish between a complaint from a person already employed by the Government or seeking employment in the Government and any other person.

Mr. WILLIAMS of New Jersey. If the Senator will refer to page 26 of the bill, subparagraph (b), it describes the areas of employment that are covered by title VII of the bill. The term "employer" does not include the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia.

These are the words that exclude the Federal Government employment situation from the section that the Senator was reading from on page 33.

Mr. ERVIN. On page 26, on line 1, it states:

(1) In subsection (a) insert "governments, governmental agencies, political subdivisions," after the word "individuals".

That is sufficient to bring the Government of the United States into it.

Mr. WILLIAMS of New Jersey. No. There are other coverages. Here the words "governments, governmental agencies, political subdivisions" refer to a definition of persons and not employers.

Mr. ERVIN. Let us see. To get this back into context, then, would the Sen-



September 30, 1970

## CONGRESSIONAL RECORD — SENATE

S16805

ator read how that entire section would read, as amended?

As I see it, the way that would read, with that put in there, would be that section 701(a) would read:

The term "persons" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

That would cover the Government of the United States, as far as the definition of persons is concerned, just as it would a State.

Mr. WILLIAMS of New Jersey. Except that it is excluded as an employer.

Mr. ERVIN. Well, that is a question.

Mr. WILLIAMS of New Jersey. I just gave the answer. The answer is that the Government of the United States is excluded.

Mr. ERVIN. Then how are you going to have the EEOC with jurisdiction, if the EEOC cannot proceed against the Government.

Mr. WILLIAMS of New Jersey. The provisions dealing with discrimination within the Federal Government are covered under a separate section, and that appears as section 715(a). It is a wholly separate, distinct section, under the heading "Nondiscrimination in Federal Government Employment." It stands on its own foundations in this legislation.

Mr. ERVIN. What page is that on?

Mr. WILLIAMS of New Jersey. That is on page 53. To come back, I did describe that accurately. This is a unit unto itself, this area of coverage.

In subsection (b) on page 54, the EEOC has its own separate, defined authority to enforce the provisions of the preceding subsection, 715(a).

Mr. ERVIN. This gives it the right to issue rules, regulations, orders, and instructions, as it deems necessary?

Mr. WILLIAMS of New Jersey. Yes.

Mr. ERVIN. Then does it have no enforcement provisions, no complaint procedure? Will they not have to issue a complaint to a department?

Mr. WILLIAMS of New Jersey. This is within the Federal Establishment, of course.

Mr. ERVIN. I know.

Mr. WILLIAMS of New Jersey. One agency of the Government is telling another. I would imagine that they would not end up in a court, with a separate agency.

Mr. ERVIN. I do not know. We had here quite a controversy between the Department of Justice and the Department of Labor, and the General Accounting Office. So there are controversies between governmental agencies.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield, so that we might ask for the yeas and nays?

Mr. ERVIN. I do not have the floor. The Senator from Colorado has the floor.

Mr. DOMINICK. I ask for the yeas and nays on this amendment.

The yeas and nays were ordered.

Mr. DOMINICK. Mr. President, I think the Senator from North Carolina has brought up a very interesting point. I do not think the bill is clear on it. I do wel-

come the record clarification of the Senator from New Jersey.

Section 715 itself, which deals with Federal employment, and which I am trying to have stricken insofar as it transfers authority from the Civil Service Commission to the EEOC, does not seem to me to be particularly clear as to which provisions of the basic law apply to its responsibility under this particular provision. But it certainly does say that the Commission has the authority to "issue rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply."

This, as far as I can see, puts the EEOC right directly into the personnel management of every single agency of the Federal Government, whether it is legislative, executive, military, or anything else; and it does seem to me that we have gone much too far in this respect.

Mr. ERVIN. It provides here expressly, at the bottom of page 54, on lines 17, 18, 19, and 20:

That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

Certainly that contemplates that an employee can file a complaint with the EEOC. Then it says:

Within thirty days of receipt of notice, given pursuant to subsection (b) or a previously issued Executive order, of final action taken on a complaint of discrimination based on race, color, religion, sex, or national origin, or after ninety days from the filing of the initial charge until such time as final action may be taken, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706(q), in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

In other words, it especially recognizes that either an employee or an applicant for Government employment can file a complaint, and that that complaint will be processed by the EEOC, and if the EEOC takes adverse action on his complaint, then he can bring a civil action.

I am unable to comprehend how that rules out the provisions on page 33, where the Commission has issued a complaint.

Mr. DOMINICK. I think the Senator has made a very good point.

Mr. ERVIN. In other words, it seems to me it certainly is unclear, at best, whether or not the government is going to finance a Federal Government employee or applicant for employment to the extent of \$1,000 in his controversy as to the reasons for his denial of employment.

Mr. DOMINICK. As to his denial of employment or as to his denial of promotion or as to his general working conditions. It could be anyone of those, so far as I can see.

I would be happy, however, to yield to the Senator from New Jersey for any further explanation he wants to give.

Mr. WILLIAMS of New Jersey. This all arose with the question of whether the provisions on page 33 of the bill do apply to section 715, and the answer is that they do not.

Am I responding to the inquiry as to the part of the bill about which the Senator from North Carolina was inquiring? Is that page 33?

Mr. ERVIN. Yes, page 33.

Mr. WILLIAMS of New Jersey. This provides for compensation to such person for reasonable expenses in connection with the preparation for the hearing, in connection with participation in the hearing. That does not apply to section 715, dealing with nondiscrimination in Federal Government employment. I thought that was the question we opened on, and the answer is clearly that the provisions on page 33 do not apply to Federal employment.

Mr. ERVIN. By all rules of construction, page 54 necessarily implies that the EEOC has brought action against a department or agency of the Federal Government on the basis of complaints made by employees or applicants for employment on the grounds prescribed in the act. Then it says, in effect, that if EEOC takes favorable action, if it issues a complaint themselves against the department, manifestly there is nothing to keep page 33 from applying on the hearing of that complaint. If they take unfavorable action, then the employee or applicant can go into the Federal court and sue the Government for employment and for back pay.

There are many other provisions in the bill, such as appointing counsel, in a one-sided manner; for parties involved in these things. I do not know whether or not they apply to the Government. If they do not apply to the Government, why should they not apply to the Government, just as they do to individuals?

Mr. WILLIAMS of New Jersey. I did not follow the reasoning of the Senator. The Senator said that manifestly the provisions on page 33 would apply, and I do not understand, when it is clear that they do not apply, how manifestly they can apply.

Mr. ERVIN. It reads:

After the Commission issues a complaint, it may, upon application by the person aggrieved, compensate such person for reasonable expenses in connection with the preparation for the hearing and in connection with participation in the hearings, including the cost of expert witness fees, transcripts and copying. Not more than \$1,000 will be allocated in any single proceeding to carry out the provision of this paragraph.

Page 54, which is a part of section 715, relating to nondiscrimination in Federal Government employment, reads:

The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions: Provided, That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

S16806

## CONGRESSIONAL RECORD — SENATE

September 30, 1970

That is an express statement that the regulations must provide for the filing of complaints by employees or applicants for employment and that the Commission must process them. In the event that the Commission does not render favorable action, the employee or the applicant for employment has a right to bring suit in the Federal courts. This clearly implies that EEOC will issue a complaint if it is going to take action at all and conduct a hearing. Page 33, by its terms, would apply to that kind of complaint as well as to any other.

Mr. WILLIAMS of New Jersey. It has never occurred to anybody but the Senator from North Carolina that it did apply. It just plain does not apply.

Mr. ERVIN. I would say that despite my great veneration for the expert knowledge of the Senator from New Jersey on this subject, and despite the fact that I never had an opportunity to study this bill until after the Senate adjourned yesterday afternoon, I am left with the impression that under this bill it does apply, because the EEOC is going to have to issue complaints against the executive agencies and it is going to have to process those complaints against the executive agencies because that is expressly stated in the proviso on page 54.

Mr. DOMINICK. I may say to the Senator that I think he has brought up a most interesting point. But I would say that the distinguishing thing perhaps in support of what the manager of the bill has suggested is that on page 33, subsection (2), the key words are "after the Commission issues a complaint." On pages 54 and 55 I do not see any specific provision concerning a complaint by the Commission, although there are complaints by employees to the Commission, which is a different situation.

Mr. ERVIN. That may be a distinction. It is a distinction about as wide as the difference between tweedledum and tweedledee, the Senator from North Carolina submits. Is the Commission going to issue notices to the departments on the basis of complaints made by the Commission or on the basis of complaints made by the employee?

I invite the Senator's attention to the words following this proviso on lines 21, 22, 23, and 24:

Within thirty days of receipt of notice, given pursuant to subsection (b) or a previously issued Executive order, of final action taken on a complaint of discrimination based on race, color, religion, sex, or national origin, or after ninety days from the filing of the initial charge until such time as final action may be taken, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706-(q), in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

It is crystal clear that it certainly contemplates a complaint filed by somebody.

Mr. DOMINICK. Yes.

Mr. ERVIN. The question in my mind is that under other provisions of the bill, as I construe it, if the individual files a complaint claiming discrimination, the Commission makes a preliminary in-

vestigation of it, and then it does not act on the basis of the individual's complaint but issues a complaint of its own.

Mr. DOMINICK. The Senator is correct on that.

Mr. ERVIN. So, under its power to adopt rules and regulations under section 715, it can provide exactly the same procedure in the case of Government employees and applicants for Government employment as it provides with respect to persons who seek or apply for private employment.

Mr. DOMINICK. As a matter of fact, I might say to the Senator that it seems pretty hard for me to determine how they are going to issue the so-called rules, regulations, orders, and instructions without having a complaint and some kind of hearing ahead of time so that the agency head will know why these orders are being put in, and under those circumstances I suppose we might stretch it. But the manager of the bill is saying it was not intended that be included; is that correct?

Mr. WILLIAMS of New Jersey. That is correct.

Mr. ERVIN. What will control is not the intention of the floor manager of the bill but what the plain words of the bill say.

Mr. DOMINICK. That is correct. It is another good reason why we should strike the whole of section 715, which I think is a monstrosity.

Mr. WILLIAMS of New Jersey. I still do not see how the provisions of the earlier part of the bill, as suggested by the Senator, apply to the section which stands on its own. There is no reference in section 715 at all to the section the Senator is talking about, except for the right to file suit.

Mr. JAVITS. Mr. President, will the Senator from North Carolina yield?

Mr. DOMINICK. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Colorado has the floor.

Mr. DOMINICK. I am happy to yield to the Senator from New York.

Mr. JAVITS. I think I see the concern of the Senator from North Carolina and would like to introduce two facts into the Record. One is the fact that when the scheme of legislation in section 715 is read with the definition of the word "employer," which appears on page 26, lines 11 and 12, which excludes the United States or a corporation owned by the United States, this lends support to the argument made by the manager of the bill that section 715, and so forth, is an autonomous scheme for dealing with employees of the United States.

The second point which I understood the Senator to make, which is more relevant, that under the broad construction given to EEOC, it may issue orders or such instructions as it deems necessary and appropriate to carry out its responsibility. There is, as I understand it, the Senator's concern here about importing counsel fees and other provisions and parts of the bill which do not legislate for the Federal Government. In my judgment, I think this is important for the record, because the Senator is perfectly right to take the precaution in the in-

terpretation of the whole of the section I have just referred to, as made by the manager of the bill, in which I join as the ranking member of the committee, so that the EEOC would not be within its power and would not be making rules, regulations, and orders carrying out its responsibilities if it simply imported the procedures of this bill respecting other employees to apply in cases involving Federal employees.

Mr. ERVIN. I thank the distinguished Senator from Colorado, but while page 26, section 701, subsection 2, and subsection (b) can be amended, it takes the United States out. Certainly the United States is brought back in by section 715's provision, and that certainly makes it implied that the EEOC has jurisdiction to issue orders to all the departments and agencies of the Federal Government, as well as the appropriate officers of the District of Columbia. But I hope that we are not giving the EEOC jurisdiction over the staffs of Senators.

Can the Senator from North Carolina receive the assurance of the Senator from New Jersey that the bill does not give the EEOC the power to supervise the employment of members of the staff of U.S. Senators?

Mr. WILLIAMS of New Jersey. The legislative branch is excluded.

Mr. DOMINICK. If I could interject there, could I say to the Senator from North Carolina that the legislative branch is included in employees, but only as to those under civil service.

Mr. WILLIAMS of New Jersey. That is correct.

Mr. DOMINICK. There are employees on the Hill not under civil service, and for that purpose—

Mr. ERVIN. Then I have the assurance, from that statement, that the word "individual" as used in section 701, subsection (a), and the words "government" and "governmental agencies," and so forth, do not include Senators of the United States; that their right to select their own staff members shall remain exempt from supervision by the EEOC.

Mr. WILLIAMS of New Jersey. It was stated by the Senator from Colorado that only those are covered who have positions in the legislative branch in the competitive civil service. The others are not.

Mr. ERVIN. That is true. That is undoubtedly so. That is expressed in section 715.

Mr. WILLIAMS of New Jersey. That is right.

Mr. ERVIN. I am also concerned about the definition of "persons" in section 701. We are not the Government of the United States. We are not exempt under that. We are individuals, I fear. We may be part of the Government.

Mr. WILLIAMS of New Jersey. Referring back to section 701, this operates under the term "employer," and not under the term "person." The term "employer" is then defined but does not include the United States as the employer but the people included within the legislative branch, which description is on page 54.

Mr. ERVIN. I am not the United States. I am an individual though, even if I

happen to be a Senator of the United States.

Mr. WILLIAMS of New Jersey. Those people who are not competitive in the civil service.

Mr. ERVIN. That is section 715.

Mr. WILLIAMS of New Jersey. They are not covered. This is further evidence that section 715 should be separate and apart and on its own.

Mr. ERVIN. Then I understand the distinguished Senator correctly to say the provisions of the bill do not apply to the Federal Government, anything except section 715—any officer of the Federal Government.

Mr. WILLIAMS of New Jersey. That is right.

Mr. ERVIN. That satisfies me on that point. I am not asking these questions to be facetious but I have been so busy—as indeed has every other Member of the Senate—these hurried days, that I could not get around to doing all my homework and I got to this just last night.

I thank the Senator for his information.

Mr. WILLIAMS of New Jersey. Mr. President, for myself, I would not have traded this legal exercise for anything.

Mr. DOMINICK. Mr. President, I am most ready to vote. For the information of those who have not had the opportunity to be present, my amendment would leave in the Civil Service Commission the Federal employees. Instead of transferring that portion of personnel management to the EEOC, it would leave it in the Civil Service Commission.

This has been recommended by the Chairman of the EEOC, Mr. Brown, and by the Chairman of the Civil Service Commission, Mr. Hampton.

Why in the world we would take 3 million Federal employees and take one portion of personnel management and put it in a whole new agency, I cannot understand.

Mr. GRIFFIN. Mr. President, would the Senator answer a question for me if he is able to do so? What would be the rationale of the committee in exempting the employees of Senators? How would we justify that?

Mr. DOMINICK. I think that we did not get around to it at all. Actually, I would presume it is a pretty subtle distinction, because they are Federal employees, but they are not under civil service. The only ones covered were the employees under civil service. I do not see why they should have been exempted, but they were.

Mr. WILLIAMS of New Jersey. Mr. President, I believe that we covered those now covered under the Executive order. It was to be limited to that group, rather than broadening it beyond the Executive order as it exists.

Mr. GRIFFIN. Mr. President, it seems to me that it would be a difficult point to explain. Apparently we would be interested in bringing all other employers under the jurisdiction of the EEOC with respect to guarantees against discrimination, but we would leave ourselves free to discriminate.

Mr. JAVITS. Mr. President, if Congress votes for this legislation, I think

we have a right to assume that Congress will in its personal conduct act in good faith. I think there is great jealousy over Executive interference with our functions and having any executive function in the executive department have the power to deal with the respective exercise of the Members of Congress. I respect that balancing of the two equities.

Even if we had done this in an advised way, I would still omit those employees because the separation of powers is, in my opinion, so critical that we should not jeopardize that concept with an executive department agency.

Mr. GRIFFIN. Mr. President, may I ask the Senator from Colorado, the sponsor of the amendment—since I did not hear all of the debate—do I correctly understand that the EEOC and the Civil Service Commission would favor the amendment of the Senator from Colorado?

Mr. DOMINICK. The Senator is correct. Chairman Brown of the EEOC and the chairman of the Civil Service Commission both testified in support of what my amendment would do—in other words, not transfer jurisdiction.

Mr. GRIFFIN. I certainly hope the amendment will be agreed to.

Mr. JAVITS. Mr. President, I wish to say just a word. The Senator from Colorado was very sparing in taking time. I am going with the committee on the whole bill.

My reason for supporting this particular provision of the bill is that there is, in my judgment, a proper case to be made for the fact that the agency which handles the personnel policies—namely, the Civil Service Commission—should not also be its own supervisor with respect to discrimination in employment.

It is for that reason that I saw some sense—I was not passionate about it, but I saw some sense—in giving rulemaking and the review power to the EEOC, so that it may make a consistent nondiscriminatory policy both in the Federal Government and in the State and local governments and for private employers.

I submit that the rationale of the committee's action is that it represents a sanction outside of the operation of the personnel policy of the Civil Service Commission itself. Experience has demonstrated, because of the very setup, that the personnel practice—the type of examination, and so forth—seems to open the door to discrimination.

I, therefore, think this is a healthy correction that is being made.

Mr. ERVIN. Mr. President, I wish to make one observation. The EEOC can give an applicant for employment with the State government \$1,000 to litigate his case. But under the explanation that has been given, they cannot give 1 cent to an applicant for Federal employment. I do not see why we make that discrimination between the Federal Government and the State agency.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia (after having voted in the affirmative). Mr. President, on this vote I have a live pair with the senior Senator from Washington (Mr. MAGNUSON). If he were present and voting he would vote "nay." If permitted to vote, I would vote "yea." Having already voted in the affirmative, I now withdraw my vote.

Mr. RANDOLPH (after having voted in the affirmative). On this vote I have a live pair with the Senator from Maine (Mr. MUSKIE). If he were present and voting he would vote "nay." I have already voted "yea." I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DONN), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Hawaii (Mr. INOUE), the Senator from Washington (Mr. MAGNUSON), the Senator from Wyoming (Mr. MCGEE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PELL), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from Maryland (Mr. TYDINGS), and the Senator from Minnesota (Mr. MCCARTHY), are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL), the Senator from North Carolina (Mr. JORDAN), the Senator from Alabama (Mr. SPARKMAN), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG) are absent on official business.

I further announce that, if present and voting, the Senator from Oklahoma (Mr. HARRIS), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Utah (Mr. MOSS) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. AIKEN), the Senator from Utah (Mr. BENNETT), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. GOODELL), the Senator from Nebraska (Mr. HRUSKA), the Senator from California (Mr. MURPHY), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Iowa (Mr. MILLER) is detained on official business.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from Iowa (Mr. MILLER), the Senator from South Dakota (Mr. MUNDT), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) would each vote "yea."

On this vote, the Senator from California (Mr. MURPHY) is paired with the Senator from New York (Mr. GOODELL). If present and voting, the Senator from California would vote "yea" and the Senator from New York would vote "nay."

S16808

## CONGRESSIONAL RECORD — SENATE

September 30, 1970

The result was announced—yeas 37, nays 29, as follows:

[No. 340 Leg.]

## YEAS—37

Allen	Ellender	Pearson
Allott	Ervin	Prouty
Anderson	Fannin	Russell
Baker	Fong	Saxbe
Bible	Fulbright	Scott
Boggs	Griffin	Smith, Maine
Cook	Gurney	Spong
Cooper	Hansen	Talmadge
Ootton	Holland	Thurmond
Curtis	Hollings	Williams, Del.
Dole	Jordan, Idaho	Young, N. Dak.
Dominick	Long	
Eastland	McClellan	

## NAYS—29

Bayh	Hughes	Nelson
Brooke	Jackson	Packwood
Burdick	Javits	Pastore
Case	Kennedy	Percy
Church	Mansfield	Proxmire
Cranston	Mathias	Schweiker
Eagleton	McGovern	Stevens
Gore	McIntyre	Symington
Hart	Metcalfe	Williams, N.J.
Hatfield	Mondale	

## PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Mr. Byrd of West Virginia, for.  
Mr. Randolph, for.

## NOT VOTING—32

Aiken	Hruska	Muskie
Bellmon	Inouye	Pell
Bennett	Jordan, N.C.	Ribicoff
Byrd, Va.	Magnuson	Smith, Ill.
Cannon	McCarthy	Sparkman
Dodd	McGee	Stennis
Goldwater	Miller	Tower
Goodell	Montoya	Tydings
Gravel	Moss	Yarborough
Harris	Mundt	Young, Ohio
Hartke	Murphy	

So Mr. DOMINICK's amendment No. 976 was agreed to.

Mr. DOMINICK, Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD of West Virginia, Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## ANNOUNCEMENT OF BRIEFING ON SOVIET SUBMARINE BASES IN CUBA

Mr. CHURCH, Mr. President, at 2:30 tomorrow afternoon the Foreign Relations Subcommittee on Western Hemisphere Affairs, of which I am chairman, will receive an intelligence briefing on the reports we have had of the construction of a Russian submarine base in Cuba.

Senators will recall that the last reports we had of Soviet military activities in Cuba led to one of the crucial crises of our generation.

I do not know whether the present situation is of such significance as the earlier confrontation in Cuba, but I believe that it is essential that Senators know precisely what the situation is, so that we need not rely on press reports and rumors.

The briefing tomorrow afternoon will be conducted by members of the Defense Intelligence Agency in room S-116 at 2:30 p.m. and any Senator who is interested is invited to attend.

Mr. President, I ask unanimous consent to have printed at this point in the Record the text of an editorial on this

subject, published in this morning's New York Times.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

## SOVIET SUB BASE IN CUBA?

It is curious that neither Moscow nor Havana has reacted publicly to the White House warning against construction of a Soviet strategic submarine base in Cuba. On occasion in the past the Soviet Government has been quick to deny much less serious accusations appearing even in obscure publications. But in this case, when a White House spokesman raised the possibility that the Kremlin had secretly begun work that would violate the spirit, if not the letter, of the 1962 Khrushchev-Kennedy agreement, there has not been a word of Soviet comment.

Pessimists will conclude that this silence confirms Washington's worst fears. Optimists will argue that Soviet leaders are taking another look at whatever plans may be under way for the Cuban port of Cienfuegos and have not yet decided what to do in the light of the White House statement.

The world was probably closer to thermonuclear war during the Cuban missile crisis of October 1962 than at any time before or since. In reporting the agreement which had resolved the crisis, President Kennedy said that the Soviet leaders had promised to remove all "weapons systems capable of offensive use" and "to halt the further introduction of such systems into Cuba." In return the United States agreed to lift its naval quarantine and to "give assurances against an invasion of Cuba." President Kennedy was thinking of land-based missiles capable of delivering nuclear weapons, but submarines having similar missiles and nuclear weapons are also "weapons systems capable of offensive use."

Violations of this understanding, coming on top of the current Soviet violations of the cease-fire pact in the Suez Canal zone, would certainly undermine any confidence in agreements with the Soviet Union. In this situation any Soviet move to create a submarine base in Cuba would only intensify tension between the two superpowers and strengthen retrogressive forces in both countries that would intensify the arms race.

## MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 3730) to extend for 1 year the act of September 30, 1965, as amended by the act of July 24, 1968, relating to high-speed ground transportation, and for other purposes.

The message also announced that the House had passed, without amendment, the joint resolution (S.J. Res. 110) to amend the joint resolution entitled "Joint resolution to establish the first week in October of each year as National Employ the Physically Handicapped Week," approved August 11, 1945 (59 Stat. 530), so as to broaden the applicability of such resolution to all handicapped workers.

The message further announced that the House had passed the bill (S. 3154) to provide long-term financing for expanded urban mass transportation programs, and for other purposes, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 14485) to

amend sections 501 and 504 of title 18, United States Code, so as to strengthen the law relating to the counterfeiting of postage meter stamps or other improper uses of the metered mail system.

The message further announced that the House had agreed to the amendments of the Senate to the joint resolution (H.J. Res. 236) authorizing and requesting the President of the United States to issue a proclamation designating the week of August 1 through August 7 as "National Clown Week."

The message also announced that the House had agreed to the amendments of the Senate to the joint resolution (H.J. Res. 1154) authorizing the President to proclaim National Volunteer Firemen's Week from September 19, 1970, to September 26, 1970.

The message further announced that the House had agreed to the amendments of the Senate to the concurrent resolution (H. Con. Res. 675) expressing the sense of the Congress with respect to the conquest of cancer as a national crusade.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 17604) to authorize certain construction at military installations, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. RIVERS, Mr. HAGAN, Mr. CHARLES H. WILSON, Mr. NICHOLS, Mr. DANIEL of Virginia, Mr. BRAY, Mr. CLANCY, Mr. KING, and Mr. FOREMAN were appointed managers on the part of the House at the conference.

The message further announced that the House had passed a bill (H.R. 18126) to amend title 28 of the United States Code to provide for holding district court for the eastern district of New York at Westbury, N.Y., in which it requested the concurrence of the Senate.

## ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 3558) to amend the Communications Act of 1934 to provide continued financing for the Corporation for Public Broadcasting, and it was signed by the Acting President pro tempore (Mr. ALLEN).

## EQUAL OPPORTUNITIES ENFORCEMENT ACT

The Senate continued with the consideration of the bill (S. 2453) to further promote equal employment opportunities for American workers.

## AMENDMENTS NO. 978

Mr. DOMINICK, Mr. President, I call up my amendments No. 978.

The PRESIDING OFFICER. The amendments will be stated by the clerk.

The legislative clerk proceeded to read the amendments.

Mr. DOMINICK, Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.



economy would be substantial. In order to reduce this impact, I propose that general revenue financing of the cash benefits program be phased in over a period of 9 years, eventually reaching one-fifth of benefit outgo. Under this proposal, the general revenue contribution for the cash benefit program would be equal to one-twenty-fifth of the fiscal outgo in fiscal 1973, three-fiftieths of the benefit outgo in fiscal 1974, two-twenty-fifths in fiscal 1975, one-tenth in fiscal 1976, three-twenty-fifths in fiscal 1977, seven-fiftieths in fiscal 1978, four-twenty-fifths in fiscal 1979, nine-fiftieths in fiscal 1980, and one-fifth in each fiscal year after 1980. I estimate that the general revenue contribution would amount to roughly \$2 billion in fiscal 1973 and would be needed to meet the significant increase in benefit outgo that would be provided under the proposed benefit improvements that I have outlined above.

Sixteenth. General revenue financing of medicare: Under present law, general revenues finance hospital insurance benefits on a transitional basis for those who do not meet regular medicare requirements and one-half of the most of the benefits payable under the medical insurance part of the program. The Government contribution thus amounts to about one-fifth of the program costs. Under the hospital insurance program, the protection provided for each insured worker is the same regardless of his earnings. For this reason, the cost of health insurance for workers who pay contributions that are less than the value of their benefit protection should be met in part by the Nation as a whole through general revenues. If this cost is not met through general revenues, the regular worker and his employer, particularly the higher-paid regular worker, will be paying contributions in excess of the value of his protection in order to subsidize those who do not pay their own way. I, therefore, propose that the combined parts A and B of medicare be financed by a one-third contribution from employees, one-third from employers, and one-third from general revenues. The general revenue contribution would be graded in over a period of 4 years, beginning with a contribution equal to one-fifth of benefit outgo in fiscal 1973, one-fifth in fiscal 1974, one-fourth in fiscal 1975, and one-third in each fiscal year after 1975. I estimate that the general revenue contribution for medicare in fiscal year 1973 will amount to about \$3 billion. Under H.R. 1, the general revenue contribution for medicare would be about \$2¼ billion in fiscal year 1973.

Mr. President, I believe "The Older Americans' Rights Act of 1971" sets a series of realizable goals, which if obtained would better guarantee the security and dignity of this Nation's elderly.

By Mr. BYRD of West Virginia (for Mr. WILLIAMS, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CRANSTON, Mr. EAGLETON, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUE, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MAGNUSON, Mr. McGOVERN, Mr. METCALF, Mr. MONDALE, Mr. MONTOMY, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. PERCY, Mr. PROXMIER, Mr. RIBICOFF, Mr. SCOTT, Mr. SCHWEIKER, Mr. STEVENSON, and Mr. TUNNEY):

S. 2515. A bill to further promote equal employment opportunities for American workers. Referred to the Committee on Labor and Public Welfare.

Mr. BYRD of West Virginia. Mr. President, at the request of the distinguished Senator from New Jersey (Mr. WILLIAMS), I offer on his behalf for introduction a bill entitled "Equal Employment Opportunities Act of 1971."

Mr. President, I ask unanimous consent, at his request, that the text of the bill and a section-by-section analysis be printed in the RECORD; and I further ask unanimous consent that a statement by the Senator from New Jersey be printed in the RECORD in conjunction with the introduction of the bill.

I also ask unanimous consent that a statement by the Senator from Massachusetts (Mr. KENNEDY) be printed in the RECORD.

There being no objection, the bill, analysis, and statements were ordered to be printed in the RECORD, as follows:

#### S. 2515

A bill to further promote equal employment opportunities for American workers

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunities Enforcement Act of 1971".*

Sec. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, governmental agencies, political subdivisions," after the word "individuals".

(2) In subsection (b) strike out all before "Provided further", and insert in lieu thereof the following:

"(b) The term 'employer' means a person engaged in an industry affecting commerce who has eight or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), (2) a bona fide private membership club (other than a labor organiza-

tion) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1970, persons having fewer than twenty-five employees (and their agents) shall not be considered employers."

(3) In subsection (c) beginning with the semicolon strike out through the word "assistance".

(4) In subsection (e) strike out between "(A)" and "such labor organization," and insert in lieu thereof "twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971", or (B) eight or more thereafter."

(5) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

Sec. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e-2) is amended to read as follows:

#### "EXEMPTION"

"Sec. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its religious activities."

Sec. 4. (a) Subsections (a) through (e) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e-5(a)-(e)) are amended to read as follows:

"(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission upon the request of any person claiming to be aggrieved, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a copy of the charge on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') as soon as practicable thereafter and shall make an investigation thereof. Charges shall be in writing and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or em-

September 14, 1971

a period of 35 years will not, in the great majority of cases, provide an accurate reflection of earnings in the period just before retirement. In order to make it possible for benefits to more accurately reflect recent earnings, I propose that 1 year of low earnings—in addition to the 5 permitted to be dropped under the present law—for each 10 years of coverage could be dropped in computing the average monthly earnings on which benefit amounts are based. This proposal would be more effective than the additional dropout year provision in H.R. 1, since a man who worked from age 22 to age 65, for example, would use 4 years less in averaging his earnings than would be used under the present law, rather than the 2 years less that he would use under H.R. 1.

Tenth. Current cost financing: The financing of the social security program should be on a current cost basis, with the trust funds maintained at a level approximately equal to 1 year's expenditures. The cash benefits contribution rate schedule in H.R. 1, as under the present law, will build up large trust fund accumulations in the near future, because the ultimate contribution rate in the law—5.15 percent each for employers and employees under the present law and 6.1 percent each under H.R. 1—is higher than necessary to finance benefits and administrative costs for many years to come. As a result, the cash benefits trust funds will grow to nearly three times the amount of benefit expenditures and administrative costs by the end of this century. Under a compulsory social insurance program, it is not necessary to rely on interest earnings from large trust fund accumulations to assure future payment of benefits. One year's benefit payments is an amount that should be sufficient to meet benefit costs during those temporary situations when current outgo is larger than current income. By limiting the contribution rate to a steady level for the next 40 years or so, major improvements in the program can be financed at a rate far below the ultimate rate provided for in H.R. 1 or in the present law.

Eleventh. Rising earnings assumption: Actuarial estimates of income to the hospital insurance part of the social security program are based on assumptions that earnings levels will continue to rise in the future, as they have in the past, and that the contribution and benefit base will be increased proportionately as earnings levels rise. The cash benefits program, on the other hand, is presently based on the assumption of level earnings and level benefits. This assumption seriously understates the dollar figures of program income and outgo over the long-range future. For this reason, the actuarial cost estimates for the cash benefits program should be based on the assumptions that earnings levels will rise, that the contribution and benefit base will be increased as earnings levels rise, and that benefit payments will be increased as prices rise.

Twelfth. Part A medicare coinsurance: H.R. 1 imposes a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day of inpa-

tient hospital coverage during a benefit period, beginning with the 31st day and extending through the 60th day. If enacted, this would mark the first time any Congress has passed legislation to reduce social security benefits. Medicare is a program which affects nearly all Americans. Not only are most of the 20 million people age 65 and over dependent on a certain level of protection, but many younger and middle-aged family heads have been helped by not having to pay large hospital bills of older parents. While there is strong sentiment for controlling the costs of the program, this should not be done by way of reducing benefits. This provision in H.R. 1 is not necessary to put the hospital insurance program on a sound financial basis. Revised financing to accomplish this end is provided for in H.R. 1, and there is no reason to believe that such financing will not be effective. The H.R. 1 provision also introduces considerations that may affect the physician's medical decision about the need for continued hospital care. To that extent, it carries with it the potential for impairing the quality and appropriateness of care furnished to medicare beneficiaries. Under present medicare regulations, a physician's certification of medical necessity for continued hospitalization is required in each case of a hospital stay in excess of 12 days. Therefore, it must be assumed that in the great majority of such cases, the medical necessity for this continued care has been established professionally. The provision in H.R. 1 would also place an additional burden on the States which pay for the deductibles and coinsurance for their medicaid recipients. The present payments of such costs already represents a substantial portion of the States' medicaid expenditures and could affect some State budgets seriously.

Thirteenth. Routine eye care, eyeglasses, dentures, and hearing aids: The health insurance program now covers nonroutine eye, ear and dental services. However, expenses incurred by individuals in connection with even relatively routine eye, ear and dental care can be quite substantial, particularly where an individual requires medical attention in two or more of these areas. Moreover, the medical appliances often required with such care—that is, hearing aids—can be costly items. I, therefore, propose that the supplementary medical insurance program cover expenses incurred for routine eye care, eyeglasses, dentures, and hearing aids subject to a deductible of \$100 in a calendar year.

Fourteenth. Maintenance drugs: Prescription drugs represent the largest single personal health expenditure the aged are now required to meet out of their own resources. A Department Task Force on Prescription Drugs, a special committee of nongovernmental drug experts, and the 1971 Advisory Council on Social Security all recommended that prescription drugs be covered under medicare. Because of this recognized need, I propose that the medicare program cover those drugs which are important for the treatment of certain specified chronic conditions afflicting the aged and disabled—heart conditions, high blood pres-

sure, diseases of the circulatory system, diabetes, respiratory conditions, and kidney conditions, for example. In addition to identifying these conditions, my proposal would provide that the Secretary of Health, Education, and Welfare, with the assistance of an expert committee on drugs, would establish a list of covered drugs which are important in the treatment of these diseases. Such coverage would apply to all persons entitled to protection under the hospital insurance plan including disability beneficiaries under the social security and railroad retirement programs, as well as persons age 65 and over. Beneficiaries would be responsible for a flat copayment of \$2 per new prescription and \$1 per refill prescription. Medicare payment would be to the drug vendor who would be responsible for maintaining necessary records and initiating claims.

Fifteenth. General revenue financing of cash benefits: Under present law, regular social security cash benefits are financed from contributions made by employees, employers, and the self-employed. General revenues are used only to finance, first, special payments made on a transitional basis to certain uninsured people age 72 and over; second, benefits attributable to military service before 1957; and third, noncontributory wage credits provided for members of the military service after 1967. General revenues are also used to finance part of the costs of the medicare program. In order to make the social security program effective in its early years, full-rate benefits are being paid to people who were already old, or in their middle years, at the time their work was first covered under the program. Only a small percentage of the actual costs of the benefits being provided to these people is met by the contributions they and their employers paid. The cost of paying full-rate benefits during the early years of the program is equal to about one-third of the total cost of the program. Thus, a substantial part of the contributions to the program goes to meet the cost of getting the program started. If this cost were to be met by a Government contribution, all of the contributions paid by future generations of workers and their employers would be available to furnish protection for them. Social security contributes to the well-being of the Nation as a whole as well as that of the individual beneficiaries. It is, therefore, appropriate that the Nation as a whole, through phased-in Government contributions from general revenues, contribute to the financing of the program. This idea is not a new one. The majority of foreign social security programs have provisions for Government contributions. General revenue contributions were recommended in 1935 by the committee which helped to formulate the original social security program and were further endorsed by social security advisory councils in 1938 and 1948. While many who advocate the general revenue financing of cash benefits have suggested that the Government's share be one-third, the cost to the Government of such a program and its consequent impact on our

ployees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

"(c) In the case of a charge filed by or on behalf of a person claiming to be aggrieved alleging an unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall take no action with respect to the investigation of such charge before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated; *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered or certified mail to the appropriate State or local authority.

"(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days; *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law, unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and a copy shall be served upon the person against whom such charge is made as soon as practicable thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

"(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to

secure from the respondent a conciliation agreement acceptable to the Commission and to the person aggrieved, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less than five days after the serving of such complaint. Related proceedings may be consolidated for hearing. Any member of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

"(g) A respondent shall have the right to file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant such other person a right to intervene or to file briefs or make oral arguments an amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure for the district courts of the United States.

"(h) If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organizations, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title; *Provided*, That interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint to be aggrieved an order dismissing the complaint.

"(i) After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the parties for the elimination of the alleged unlawful employment practice and the commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or order made or issued by it. An agreement approved by the Commission shall be enforceable under subsections (1) through (n) and the provisions of those subsections shall be applicable to the extent appropriate to a proceeding to enforce an agreement.

"(j) Findings of fact and orders made or issued under subsections (h) or (i) of this section shall be determined on the record. Section 554, 555, 556, and 557 of title 5 of the United States Code shall apply to such proceedings.

"(k) Any party aggrieved by a final order of the Commission granting or denying in whole or in part the relief sought may obtain

a review of such order in any United States court of appeals for the circuit in which the unlawful employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days after the service of such order, a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to any other party to the proceeding before the Commission, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant to the petitioner or any other party, including the Commission, such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission, its member, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(l) The Commission may petition any United States court of appeals for the circuit in which the unlawful employment practice in question occurred or in which the respondent resides or transacts business, for the enforcement of its order and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that its order be enforced and for appropriate temporary relief or restraining order. The Commission shall file in court with its petition the record in the proceeding as provided in section 2112 of title 28, United States Code. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the Commission. Upon the filing of such petition, the court shall have jurisdiction



tion of the proceeding and of the question determined therein and shall have power to grant to the Commission, or any other party, such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. No objection that has not been urged before the Commission, its members, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(m) If no petition for review, as provided in subsection (k), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Commission under subsection (1) after the expiration of such sixty-day period. The clerk of the court of appeals in which such petition for enforcement is filed shall forthwith enter a decree enforcing the order of the Commission and shall submit a copy of such decree to the Commission, the respondent named in the petition, and to any other parties to the proceeding before the Commission.

"(n) If within ninety days after service of the Commission's order, no petition for review has been filed as provided in subsection (k), and the Commission has not sought enforcement of its order as provided in subsection (1), any person entitled to relief under the Commission's order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the unlawful employment practice in question occurred, or in which a respondent named in the order resides or transacts business. The provisions of subsection (m) shall apply to such petitions for enforcement.

"(o) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by attorneys appointed by the Commission.

"(p) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes on the basis of

a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding, the Commission shall, after it issues a complaint, bring an action for appropriate temporary or preliminary relief pending its final disposition of such charge, or until the filing of a petition under subsections (k), (l), (m), or (n) of this section, as the case may be, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judicial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a) (2) thereof, shall govern proceedings under this subsection.

"(q) (1) If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has neither issued a complaint under subsection (f) nor entered into an agreement under subsection (f) or (1) which is acceptable to the Commission and to the person aggrieved, the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon the commencement of such civil action, the Commission shall be divested of jurisdiction over the proceeding and shall take no further action with respect thereto, except that, upon timely application, the court in its discretion may permit the Commission to intervene in such civil action if the Commission certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending termination of State or local proceedings described in subsection (c) or (d) or the efforts of the Commission to obtain voluntary compliance.

"(2) The right of an aggrieved person to bring a civil action under paragraph (1) of this subsection shall terminate once the Commission has issued a complaint under subsection (f), or has entered into an agreement under subsection (f) or (1) which is acceptable to the Commission and to the person aggrieved: *Provided*, That if after issuing a complaint the Commission has not issued an order under subsection (h) within a period of one hundred and eighty days of the issuance of the complaint, the Commission shall so notify the person aggrieved and a civil action may be brought against the respondent named in the charge at any time prior to the Commission's issuance of an

order under subsection (h): *Provided further*, That if the person aggrieved files a civil action against the respondent during the period from one hundred and eighty days to one year after the issuance of the complaint such person shall notify the Commission of such action and the Commission may petition the court not to proceed with the suit. The court may dismiss or stay any such action upon a showing that the Commission has been acting with due diligence on the complaint, that the Commission anticipates the issuance of an order under subsection (h) within a reasonable period of time, that the case is exceptional, and that extension of the Commission's jurisdiction is warranted."

(b) Subsections (f) through (k) of section 706 of such Act and references thereto are redesignated as subsections (r) through (w), respectively.

(c) Section 706(r) of such Act, as redesignated by this section, is amended by adding at the end the following sentence: "Upon the bringing of any such action, the direct court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper."

(d) Section 706(u) and (v) of such Act, as redesignated by this section, are amended (1) by striking out "(e)" and inserting in lieu thereof "(q)", and (2) by striking out "(1)" and inserting in lieu thereof "(u)".

Sec. 5. Section 707 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(c) Effective on the date of enactment of the Equal Employment Opportunities Enforcement Act, the functions of the Attorney General and the Acting Attorney General, as the case may be, under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall thereafter carry out such functions in the manner set forth in subsections (d) and (e) of this section.

"(d) In all suits commenced pursuant to this section prior to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America or the Attorney General or Acting Attorney General, as appropriate.

"(e) Subsequent to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission: *Provided*, That all such actions shall be in accordance with the procedures set forth in section 706, including the provisions for enforcement and appellate review contained in subsections (k), (l), (m), and (n) thereof."

Sec. 6. (a) Subsections (b), (c), and (d) of section 709 of the Civil Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e-8(b)-(d)) are amended to read as follows:

"(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the serv-

ices of such agencies and their employees, and, notwithstanding any other provision of law, may pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class or persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

"(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving

such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

(b) Section 709 of the Civil Rights Act of 1964 is amended by: (1) redesignating section 709(e) as 709(f) and (2) by adding immediately after section 709(d) as amended, the following subsection (e):

"(e) Any record or paper required by section 709(c) of this title to be preserved or maintained shall be made available for inspection, reproduction, and copying by the Commission or its representative, or to the Attorney General or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the members of the Commission nor its representative, or the Attorney General, nor his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof, or to a governmental agency, or in the presentation of any case or proceeding before any court or grant jury. The United States district court for the district in which a demand is made or in which a record or paper so demanded is located, shall have jurisdiction to compel by appropriate process the production of such record or paper."

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e-9) is amended to read as follows:

#### "INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply:

*Provided*, That no subpoena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served upon the respondent a complaint and notice of hearing under subsection (f) of section 706."

SEC. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e-2(a)(2)) is amended by inserting the words "or applicants for employment" after the words "his employees."

(b) Section 703(c)(2) of such Act is amended by inserting the words "or applicants for membership" after the word "membership".

(c) (1) Section 704(a) of such Act is amended by inserting "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency" in section 704(a).

(2) Section 704(b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(d) (1) The second sentence of section 705 (a) is amended by inserting before the period at the end thereof a comma and the following: "and all members of the Commission shall continue to serve until their successors are appointed and qualified: *Provided*, That no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the

session of the Senate in which such nomination was submitted".

(2) The fourth sentence of section 705(a) of such Act is amended to read as follows: "The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearings examiners, and employees as he deems necessary to assist it in the performance of its functions and fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

(e) Section 705(g)(1) of such Act is amended by inserting at the end thereof the following: "and to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))."

(f) Section 705(g)(6) of such Act is amended to read as follows:

"(6) to intervene in a civil action brought by an aggrieved party under section 706."

(g) Section 713 of such Act is amended by adding at the end thereof the following new subsections:

"(c) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i), (k), and (l) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and powers with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided*, That nothing in this subsection authorizes the Commission to provide for persons other than those referred to in clauses (2) and (3) of subsection (b) of section 556 of title 5 of the United States Code to conduct any hearing to which that section applies.

"(d) The Commission is authorized to delegate to any group of three or more members of the Commission any or all of the powers which it may itself exercise."

(h) Section 714 of such Act is amended by striking out "section 111" and inserting in lieu thereof "sections 111 and 1114".

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(55) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Clause (111) of section 5316 of such title is repealed.

SEC. 10. Section 715 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended to read as follows:

"SEC. 715. All authority, functions, and responsibilities vested in the Secretary of Labor pursuant to Executive Order 11246

September 14, 1971

relating to nondiscrimination in employment by Government contractors and subcontractors and nondiscrimination in federally assisted construction contracts are transferred to the Equal Rights Employment Opportunity Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall hereafter carry out all such authority, functions, and responsibilities pursuant to such order."

Sec. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

**"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT**

"Sec. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), and in those portions of the government of the District of Columbia, and the legislative and judicial branches of the Federal Government having positions in the competitive service shall be made free from any discrimination based on race, color, religion, sex, or national origin.

"(b) The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions: *Provided*, That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

"(c) Within thirty days of receipt of notice, given pursuant to subsection (b), of final action taken on a complaint of discrimination based on race, color, religion, sex, or national origin, or after ninety days from the filing of the initial charge until such time as final action may be taken, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706(q), in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

"(d) The provisions of section 706 (q) through (w), as applicable, shall govern civil actions brought hereunder.

"(e) All functions of the Civil Service Commission which the Director of the Office of Management and Budget determines relate to nondiscrimination in Government employment are transferred to the Equal Employment Opportunity Commission.

"(f) This section shall become effective six months after the date of enactment of this Act.

"(g) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution, statutes, and Executive orders."

Sec. 12. The amendments made by this Act to section 706 of the Civil Rights Act

of 1964 shall not be applicable to charges filed with the Commission prior to the enactment of this Act.

**SECTION-BY-SECTION ANALYSIS OF EQUAL EMPLOYMENT OPPORTUNITIES ACT OF 1971**

**SECTION 2**

This section amends certain definitions in section 701 of the Civil Rights Act of 1964.

Section 701(a).—This subsection defines "person" to include State and local governments, governmental agencies and political subdivisions.

Section 701(b).—This subsection would extend coverage of employers to those with 8 or more employees one year after enactment. The standard for determining the number of employees of an employer, that is, "employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year", would apply to employers of 25 or more employees during the first year as well as the final coverage of eight or more employees. This subsection would broaden the meaning of "employer" to include State and local governments and the District of Columbia departments or agencies (except those subject by statute to procedures of the Federal competitive service as defined in 5 USC 2102).

Section 701(c).—This subsection eliminates the exemption for agencies of the United States, States or of political subdivisions of States from the definition of "employment agency" in order to conform with the expanded coverage of State and local governments in section 701(a) and (b).

Section 701(e).—The subsection is revised to include coverage of labor organizations with 8 or more members one year after enactment.

**SECTION 3**

Section 702 is amended to eliminate the exemption for employment of individuals engaged in educational activities of non-religious educational institutions. It continues the exemption for employment of aliens outside the United States and to a religious corporation, association, educational institution or society with respect to employment of individuals of a particular religion to perform work connected with religious activities.

**SECTION 4 (a)**

This section amends sections 706 (a)-(e) of the Civil Rights Act of 1964 entitled "Prevention of Unlawful Practices."

Section 706(a).—This subsection would empower the Commission to prevent persons from engaging in unlawful employment practices under sections 703 and 704 of title VII of the Civil Rights Act of 1964.

Section 706(b).—This subsection prescribes the procedures to be followed when a charge of an unlawful employment practice is filed with the Commission. The Commission must serve a copy of the charge on the respondent, investigate the charge and make its determination on whether there is reasonable cause to believe that the charge is true. If it finds no reasonable cause, the Commission must dismiss the charge; if it finds reasonable cause, it must attempt to conciliate the case. The subsection makes a number of changes in existing law:

1. Under present law, a charge may be filed only by a person aggrieved under oath. This subsection would permit a charge to be filed by or on behalf of a person aggrieved, and eliminates the requirement of an oath.

2. The Commission would be required to make its determination on reasonable cause as promptly as possible and, "so far as practicable," within 120 days from the filing of the charge or from the date upon which the Commission is authorized to act on the charge under section 706 (c) or (d).

3. This subsection and section 8(c) of the bill add appropriate provisions to carry out the intent of the present statute to provide full coverage for joint labor-management

committees controlling apprenticeship or other training or retraining, including on-the-job training programs. While these joint labor-management committees are prohibited under section 703(d) of the present act from discriminating, they were not expressly included in the prohibition against discriminatory advertising or retaliation against persons participating in Commission proceedings (sec. 704 (a) and (b)) or in the procedures for filing charges in section 706(a).

Section 706(c).—This provision retains the present requirement that the Commission defer for a period of 60 days to State or local agencies functioning under appropriate anti-discrimination laws (or 120 days during the first year after the effective date of such law). The only change in the present law is to delete the term "no charge may be filed" by an aggrieved person in such State or locality. The present statute is somewhat ambiguous respecting Commission action on charges filed prior to resort to the State or local agency. The new language clarifies the present statute by permitting the charge to be filed but prohibiting the Commission from taking action with respect thereto until the prescribed period has elapsed.

Section 706(d).—This subsection, requiring deferral to State or local anti-discrimination agencies in the case of charges filed by a member of the Commission, follows the language of the present statute.

Section 706(e).—This subsection prescribes the time limits for the filing of a charge. Under the present statute, the charge must be filed within 90 days after the alleged unlawful employment practice occurred. In cases where the Commission defers to a State or local agency, the charge must presently be filed within 210 days of the occurrence of the alleged unlawful practice, or within 30 days after the person aggrieved receives notice that State or local agency has terminated its proceedings, whichever is earlier. This subsection would permit charges to be filed within 180 days of the alleged unlawful practice—a limitation period similar to that contained in the Labor-Management Relations Act, as amended (29 U.S.C. 160(b)). Where the Commission defers to a State or local agency, the time limit is extended to 300 days after the occurrence of the alleged unlawful practice or 30 days after receipt of notice that the State or local agency has terminated its proceedings. This subsection also requires that the charge be served on the respondent as soon as practicable after its having been filed.

Sections 706(f) through 706(p).—These subsections, which are new, set forth the procedure to be followed where the Commission, after finding reasonable cause to believe that the allegations of the charge are true, is unable to conciliate the case. The hearing and review requirements are similar to those found in most statutes governing administrative agencies.

Section 706(f).—Under this subsection, if the Commission is unable to secure a conciliation agreement pursuant to section 706 (b) that is acceptable to the Commission and to the person aggrieved, it would promptly issue and serve upon the respondent a complaint and notice of hearing. The Commission's determination that it is unable to secure such an agreement would not be reviewable in court. Conciliation agreements entered into by the Commission would be enforceable in court in accordance with the provisions of section 706(l). If a Commissioner files a charge, he shall not participate in a hearing in any complaint arising out of such charge, except as a witness.

Section 706(g).—This subsection prescribes certain statutory procedural requirements after a complaint is issued by the Commission. The respondent would be provided an opportunity to file an answer



to the complaint, and to amend its answer upon a showing of reasonableness and fairness. The respondent and the aggrieved person are full parties and permitted to appear at any stage of the proceeding. The provision for active participation of the aggrieved persons differs from the Labor-Management Relations Act (29 U.S.C. 160 (b)), under which the person filing the charge is permitted to intervene only in the discretion of the person conducting the hearing. The Commission could also, in its discretion, grant to other persons the right to intervene, to file briefs, or to make oral argument, as it deems appropriate. Testimony at hearings must be under oath and reduced to writing and proceedings shall, so far as practicable, be conducted in accordance with the rules of evidence in the district courts of the United States. This last provision is similar to that contained in the Labor-Management Relations Act (29 U.S.C. 160(b)). As specified in section 706(j), all hearings must be conducted in accordance with the Administrative Procedure Act. The only persons, in addition to members of the Commission, who may preside at hearings are hearing examiners appointed under section 3105 of title 5 of the United States Code.

Section 706(h).—This subsection provides that if the Commission, following a hearing, finds that the respondent has engaged in an unlawful employment practice, it shall state its findings of fact and issue an order to be served on the parties, requiring that the respondent cease and desist from its unlawful conduct and take such affirmative action, including reinstatement or hiring of employees, with or without backpay as will effectuate the policies of the Act. Interim earnings or amounts earnable with reasonable diligence by the aggrieved persons would operate to reduce the backpay otherwise allowable. The order could also require that the respondent make reports from time to time to the Commission. If the Commission finds no unlawful employment practice, it would state such findings and issue an order dismissing the complaint. This provision is intended to give the Commission wide discretion in fashioning the most complete relief possible to eliminate all of the consequences of the unlawful employment practice, caused by, or attributable to the respondent.

Section 706(i).—This subsection would make clear the authority of the Commission, any time after a charge has been filed until the record is filed in court, to end proceedings by agreement with the parties for the elimination of the alleged unlawful employment practice. Agreements entered into under this section or section 706(f) would be enforceable in the appropriate court of appeals under section 706(l) through (n). The Commission would also be able, upon reasonable notice, to modify or set aside, in whole or in part, any finding or order made or issued by it.

Section 706(j).—This subsection requires that findings of fact and orders made or issued under subsection (h) or (i) be on the record in accordance with Administrative Procedure Act.

Section 706(k).—This subsection would permit a party aggrieved by a final order of the Commission—the respondent or the person or persons on whose behalf the charge was filed—to seek review of such order in a U.S. court of appeals within 60 days after the service of the Commission's order. The subsection specifies the procedures to be followed after a petition for review is filed, including:

1. The clerk of the court transmits a copy of the petition to the Commission and to any other party to the proceeding before the Commission;

2. The Commission files in court the record in the proceedings pursuant to 28 U.S.C. 2112

at which time the court of appeals has exclusive jurisdiction.

3. The Court of Appeals is authorized to grant such temporary relief, restraining order, or other order as it deems just and proper and may enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission. The findings of fact by the Commission are conclusive if they are supported by substantial evidence on the record considered as a whole.

4. Any party to the proceedings before the Commission may intervene in the court of appeals and a party may apply for leave to adduce additional evidence before the Commission, which could then modify its original findings. Modified findings would also be conclusive if supported by substantial evidence on the record considered as a whole.

5. Objections not urged before the Commission, its members, or agents, will not be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

6. Commencement of proceedings under this subsection would not stay the Commission's order unless ordered by the court.

7. The courts of appeals are required to hear petitions expeditiously. This requirement is intended to emphasize to the courts of appeals the need for promptly acting on petitions in order to have speedy resolution of these cases.

Section 706(l).—This subsection would authorize the Commission to petition a U.S. court of appeals for enforcement of its order. The prescribed procedures in the case of petitions for enforcement under this subsection are similar to section 706(k) except that no time limit is specified for the enforcement petition (but, see section 706(m) regarding the self-enforcement procedure), and the Commission would be authorized to seek an order from the court for temporary or preliminary enforcement of its order pending complete review by the court of appeals.

Section 706(m).—Under this subsection, if there is no petition for review filed within 60 days as provided in section 706(k), the Commission's findings of fact and order would become conclusive in connection with any petition for enforcement filed pursuant to section 706(l). If the Commission petitions for an enforcement order, the clerk of the court of appeals would enter a decree enforcing the order of the Commission and transmit copies to the Commission, the respondent, and any other parties to the proceeding before the Commission.

Section 706(n).—This subsection provides that any person entitled to relief under a Commission order could obtain enforcement of the order if within 90 days after service of the Commission's order there has been no petition for review filed under subsection (k) or no petition for enforcement filed by the Commission under subsections (l) or (m). The procedures and provisions of subsection (m) would apply to such petition for enforcement.

Section 706(o).—This subsection provides that the Attorney General would conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other Commission litigation, including litigation arising under section 706(k), (l), (m), (n), (p), or (q), litigation arising in connection with the Commission's recordkeeping requirements under section 709, the enforcement of the Commission's authority to conduct investigations under section 710, and private litigation in which the Commission is involved as amicus curiae, as well as judicial proceedings in which the Commission intervenes, shall be conducted by attorneys appointed by the Commission.

Section 706(p).—Under this subsection, if, after a charge is filed under section 706(b), the Commission concludes on the basis of a preliminary investigation that prompt judi-

cial action is necessary to preserve its power to grant effective relief in the proceeding, it must bring an action for appropriate preliminary or temporary relief in the United States district court in the judicial district in which the unlawful employment practice is alleged to have been committed, where the person would have been employed but for the alleged unlawful practice, or if the respondent is not to be found in any of these districts, in the judicial district where the respondent has its principal office. The subsection further provides that for purposes of 28 U.S.C. 1404 and 1406 (which permit the court to transfer an action to another judicial district where the action might have been brought) the district in which the respondent has his principal office is to be considered a judicial district where the action might have been brought.

This subsection, in addition, would make rule 65 of the Federal Rules of Civil Procedure, except paragraph (a) (2) thereof, applicable to proceedings under section 706 (p). Rule 65 prescribes procedural requirements for the granting of temporary restraining orders and preliminary injunctions. Paragraph (a) (2) of rule 65 permits the court to advance the trial of the merits and to consolidate the trial on the merits with the hearing on the application for injunction. This provision would be inapplicable to proceedings under section 706 (p).

Any relief ordered by the court under this subsection would be permitted to run until such time as a court of appeals has assumed jurisdiction of a review or enforcement petition.

Section 706(q).—This subsection preserves the private right of action by an aggrieved person, under this subsection, the aggrieved person may bring such an action within 60 days after being notified by the Commission that it has dismissed the charge, or that 180 days have elapsed from the filing of the charge without the Commission either issuing a complaint or entering into an agreement under section 706 (f) or (i) which is acceptable to the Commission and to the person aggrieved.

The subsection would also divest the Commission of jurisdiction over any pending proceedings upon the filing of a private action. Conversely, the right of an aggrieved party to bring a private action would terminate once the Commission issued a complaint under subsection 706(f) or entered into conciliation agreement under subsection 706 (f) or (i) which is agreeable to the Commission and to the person aggrieved. If the Commission does not issue an order within 180 days after it issues a complaint, the aggrieved person may also institute a civil action. If such action is instituted within one year of the issuance of the Commission's complaint, the Commission may request that it be stayed or dismissed upon a showing that it has been acting with due diligence, that it anticipates issuance of an order within a reasonable time on the complaint, that the case or proceeding is exceptional and that extension of exclusive jurisdiction of the Commission is warranted.

#### SECTION 4 (b) AND (d)

These sections redesignate the paragraph numbers of subsections of section 706 (e) through (k) of the Civil Rights Act of 1964 that would be retained as section 706 (q) through (w), and also redesignate other paragraph numbers to be consistent with the changes made in section 706.

Section 4(c).—This section adds a sentence to subsection 706(a) relating to an action by a District Court that would permit just and proper preliminary relief.

#### SECTION 5

Section 707, establishing the Attorney General's "pattern or practice" action, is amended to provide for a transfer of this function to the Commission upon the en-



actment of the bill. The subsection would provide that currently pending proceedings would continue without abatement, that all court orders and decrees remain in effect, and that the Commission would be substituted as a part for the United States of America or the Attorney General or Acting Attorney General as appropriate. The Commission would have authority to investigate and act on pattern or practice charges except that any action would follow the procedures of Section 706.

## SECTION 6

This section amends section 709 of the Civil Rights Act of 1964, entitled "Investigations, Inspections, Records, State Agencies."

Section 709(a).—This subsection, which gives the Commission the right to examine and copy documents in connection with its investigation of a charge, would remain unchanged.

Section 709(b).—This subsection would authorize the Commission to cooperate with State and local fair employment practices agencies in order to carry out the purposes of the title, and to enter into agreements with such agencies, under which the Commission would refrain from processing certain types of charges or relieve persons from the record-keeping requirements. This subsection would make two changes in the present statute. Under this subsection, the Commission could, within the limitations of funds appropriated for the purpose, also engage in and contribute to the cost of research and other projects undertaken by these State and local agencies and pay these agencies in advance for services rendered to the Commission. The subsection also deletes the reference to private civil actions under section 706(e) of the present statute.

Section 709(c).—This subsection, like the present statute, would require employers, employment agencies, labor organizations, and joint labor-management apprenticeship committees subject to the title to make and keep certain records and to make reports therefrom to the Commission. Under the present statute, a party required to keep records could seek an exemption from these requirements on the ground to undue hardship either by applying to the Commission or bringing a civil action in the district court. This subsection would require the party seeking the exemption first to make an application to the Commission and only if the Commission denies the request could the party bring an action in the district court. This subsection would also authorize the Commission to apply for a court order compelling compliance with the recordkeeping and reporting obligations set forth in the subsection.

Section 709(d).—This subsection would eliminate the present exemption from record-keeping requirements for those employers in States and political subdivisions with fair employment practice laws or for employers subject to Federal executive order or agency recordkeeping requirements. Under this subsection, the Commission would consult with interested State and other Federal agencies in order to coordinate the Federal record-keeping requirements under section 709(c) with those adopted by such agencies. The subsection further provides that the Commission furnish information obtained to State and local fair employment agencies, on condition that the information would not be made public prior to the institution of State or local proceedings.

Section 709(e).—Under this subsection, the Commission, or the Attorney General, would have the authority to direct the person having custody of any record or paper required by section 709(c) to be preserved or maintained to make such record or paper available for inspection or copying by the Commission or the Attorney General. The district court of the judicial district where the demand is made or the papers are located would

have jurisdiction by appropriate process to compel the production of such record or paper. The subsection further provides that the members of the Commission and its representatives or the Attorney General and his representatives, would not, unless ordered by the court, disclose any record or paper produced except to Congress or a congressional committee, to other governmental agencies, or in the presentation of cases before a court or a grand jury.

## SECTION 7

This section would amend section 710 of the Civil Rights Act of 1964 to make section 11 of the National Labor Relations Act (29 U.S.C. 161), except for one provision thereof, applicable to Commission investigations. This section would require the Commission or a member thereof, upon application of a party, to issue a subpoena requiring the attendance and testimony of a witness or the production of any evidence in a proceeding. The person served with the subpoena could petition the Commission to revoke the subpoena within 5 days. On application of the Commission, an appropriate district court could order a person to obey a subpoena and failure to comply with the court order would be punishable in contempt proceedings.

Under this section, the Commission would not be authorized to issue a subpoena on the application of a private party before it issues a complaint and notice of hearing. This provision, which is in accord with the actual practice of the National Labor Relations Board, would give the Commission exclusive authority to conduct the prehearing investigation.

Section 11 of the National Labor Relations Act also contains provisions relating to privileges of witnesses, immunity from prosecution, fees, process, service, and return, and information and assistance from other agencies.

## SECTION 8 (a) AND (b)

These subsections would amend sections 703(a) (2) and 703(c) (2) of the present statute to make it clear that discrimination against applicants for employment and applicants for membership in labor organizations is an unlawful employment practice. This subsection would merely be declaratory of present law.

## SECTION 8 (c) (1) AND (2)

These subsections would amend section 704(a) and (b) of the present statute to make clear that joint labor-management apprenticeship committees are covered by those provisions which relate to discriminatory advertising and retaliation against individuals participating in Commission proceedings.

## SECTION 8 (d) (1)

This subsection would amend section 705 of the present statute to permit a member of the Commission to serve until his successor is appointed but not for more than 60 days when Congress is in session unless the successor has been nominated and the nomination submitted to the Senate, or after the adjournment sine die of the session of the Senate in which such nomination was submitted.

## SECTION 8 (d) (2)

The subsection is substantially the same as present section 705 and would make the Chairman of the Commission, on behalf of the Commission, responsible for the administrative operations of the Commission and for the appointment of officers, agents, attorneys, hearing examiners, and other employees of the Commission in accordance with Federal law.

## SECTION 8 (e)

This subsection would amend section 706 (g) (1) of the present act to permit the Commission to accept uncompensated services. It is intended to permit the Commission to utilize these services for such purposes as education, publicity, and the collection of

data. It would not be expected to accept such services in connection with the prosecution or decision of cases before it except in extraordinary situations.

## SECTION 8 (f)

This subsection would eliminate the provision in present section 705(g) authorizing the Commission to request the Attorney General to intervene in private civil actions and instead permit the Commission itself to intervene in such civil actions as provided in section 706(q).

## SECTION 8 (g)

This subsection would, subject to certain exceptions, permit the Commission to delegate any of its functions, duties and powers to such persons as it may designate by regulation. A number of other agencies have broad authority to delegate functions; for example, the Securities and Exchange Commission (15 U.S.C. 78d-1), the Interstate Commerce Commission (49 U.S.C. 17(5)) and the Federal Communications Commission (47 U.S.C. 155(d)). The exceptions are as follows:

(1) The Commission could not delegate its powers to make decisions on the merits after administrative hearings under section 706(h) or to modify or set aside its findings or make new findings under section 706(i), (k), and (l). However, like the National Labor Relations Board (29 U.S.C. 153(b)), the Commission would be authorized to delegate this power or any of its other powers to groups of three or more members of the Commission.

(2) The Commission could not delegate its authority under section 713(c) to make rules of general applicability. A similar limitation is imposed on the Securities and Exchange Commission (15 U.S.C. 78d-1(a)).

(3) The Commission could not delegate its authority under section 709(b) to make agreements with States under which the Commission agrees to refrain from processing certain charges or to relieve certain persons from the recordkeeping requirements.

(4) The Commission could not provide for the conduct of administrative hearings except by members of the Commission or by hearing officers appointed in accord with 5 U.S.C. 556.

## SECTION 8 (h)

This subsection would afford additional protection to officers, agents, and employees of the Commission in the performance of their official duties by making 18 U.S.C. 1114 applicable to them.

## SECTION 9 (a), (b), AND (c)

These subsections would make certain modifications in the position of the Chairman of the Commission and the members of the Commission in the executive pay scale, so as to place them in a position of parity with officials in comparable positions in agencies having substantially equivalent powers such as the National Labor Relations Board, the Federal Trade Commission and the Federal Power Commission.

## SECTION 10

Section 715.—This section transfers the functions of the Secretary of Labor under Executive Order 11246 concerning non-discrimination in employment by government contractors to the Commission. Under existing organization, the Executive Order is enforced by the Office of Federal Contract Compliance.

## SECTION 11

Section 717(a).—This subsection would make clear that personnel actions of the U.S. Government affecting employees or applicants for employment shall be made free from any discrimination based on race, color, religion, sex, or national origin. All employees subject to the executive branch and Civil Service Commission control or protection are covered by this section.

Section 717(b).—Under this subsection, the Commission would have the authority to enforce the provision of subsection 715(a). The Commission would be empowered to issue rules, regulations, orders and instructions as it deems necessary. The head of each executive department and agency and the appropriate officer of the District of Columbia would be required to comply with such Commission directives. Employees or applicants must be notified of final action on their complaints.

Section 717(c) and (d).—The provision of section 706(q) concerning private civil actions by aggrieved persons would apply to aggrieved Federal employees or applicants. They could file a civil action within 30 days of notice of final action on a complaint given pursuant to subsection 717(b), or after 90 days from the filing of an initial charge.

Section 717(e).—This section would transfer nondiscrimination functions of the Civil Service Commission to the Equal Employment Opportunity Commission.

Section 717(f).—This subsection would make the effective date of section 717 six months after the date of enactment of this Act.

Section 717(g).—This subsection provides that nothing in this act relieves any Government agency or official of his existing nondiscrimination obligations under the Constitution, other statutes, or executive orders.

The present section 715 relating to a special study by the Secretary of Labor is repealed by the substitution of the new provisions. That study has been completed and the section has no more effect.

#### SECTION 12

This section provides that the amended provisions of section 706 concerning the cease and desist enforcement powers would not apply to charges filed with the Commission prior to the effective date of this act. In addition, those new or amended sections of title VII not specifically stated in this section to be inapplicable to current charges, such as the amendments to section 705, 709, 710, 713, and 715 would cover existing charges.

#### STATEMENT BY SENATOR WILLIAMS

Mr. President, on behalf of myself and other Senators, I introduce a bill that would strengthen and broaden the enforcement powers of the Equal Employment Opportunity Commission.

Title VII of the Civil Rights Act was enacted by Congress in 1964. This Act, signed into law just a little more than seven years ago, recognized the prevalence of discriminatory employment practices in the United States and the need for Federal legislation to deal with the problem of such discrimination. The goal of assuring equal employment opportunity for all of our citizens was made a national commitment by that Congressional Act. Unfortunately, however, the machinery we created for achieving this goal was not in all respects equal to the commitment.

The deficiency in the 1964 Act was that the Equal Employment Opportunity Commission, which was established to administer Title VII, was not given the authority to issue judicially enforceable orders to back up its findings of discrimination based on race, color, religion, sex, or national origin. Its authority in such cases has been limited to conciliation efforts.

As a consequence, unless the Department of Justice concludes that a pattern or practice of discrimination is involved, the burden of obtaining enforceable relief rests upon each individual victim of discrimination, who must go into court as a private party, with the resultant expense that entails, in order to secure the rights promised him under the law.

Thus, those persons whose economic dis-

advantage was a prime reason for enactment of the Equal Employment Opportunities provision, find that their only recourse in the face of unyielding discrimination is one that is financially prohibitive.

A further consequence is that the Commission's lack of enforcement authority reduces its ability to achieve compliance and conciliation efforts. Obviously respondents are less willing to cooperate in arriving at a satisfactory resolution of a discrimination complaint when they know that the Commission's power is merely exhortive. The experience of the Commission has substantiated this conclusion for the fact is that conciliation efforts have been unsuccessful in more than half of the cases in which it has found that discrimination has occurred.

The economic consequences to those whom the Act was designed to help have been extreme. The statistics are vivid and I would like to recite just a few of the more significant results. Last month the nation's overall unemployment was 8 percent of the labor force. The unemployment rate for Negroes and other minorities was 9.8 percent. By comparison, the rate of white unemployment was 5.6 percent. The unemployment rate of non-white teenagers at this time last year was 28.7 percent. This horrendous figure has increased to 31.3 percent compared with 15.4 percent for white teenagers.

Moreover, the burden of unfair employment practices does not just fall on our minority citizens. A major area of compliance ignored by employers is the rights of female workers.

About 40 percent of all workers are women. Current figures indicate that two-thirds of all working mothers are either widowed, divorced or separated from their husbands, or had husbands whose incomes were below \$7,000.

The discrimination against women in employment continues particularly with regard to earnings. The average American woman who works full time earns only \$60.50 for each \$100 earned by the average American man.

Unfortunately, it must also be noted that discrimination, primarily in the executive suite, is still practiced on the basis of religion and nationality.

The time has come to bring an end to job discrimination once and for all and to ensure to every American the decent self-respect that goes with a job commensurate with one's abilities.

The hopeful prospects that Title VII offered millions of Americans in 1964 must be made a reality in fact if we are to maintain a healthy society and a Nation dedicated to justice.

Last year I introduced similar legislation as S. 2453. That bill, after extensive deliberation by the Senate, was passed providing the needed enforcement machinery for equal employment opportunity for the first time. Unfortunately, the House of Representatives did not act on the bill before adjournment.

Our bill provides the Equal Employment Opportunity Commission with the power to conduct administrative hearings if conciliation efforts fail after a complaint and to issue cease and desist orders that would eliminate discriminatory employment practices.

Similar procedures have long been available to other administrative agencies, and there is clearly no valid reason for any longer depriving this Commission of similar machinery for performing its assigned responsibilities. To ensure due process, the Commission's orders will be subject to judicial review in the United States Courts of Appeal upon petition by any party to the proceedings.

In addition, the bill consolidates three areas of Federal civil rights activities in the Equal Employment Opportunity Commis-

sion. Since the enactment of the Civil Rights Act of 1964 there has been increased activity by the Federal Government in eliminating employment discrimination through its procurement power under Presidential Executive Order. In addition, the Federal Government has moved to eliminate employment discrimination within its own house through the President's authority over the Civil Service Commission.

In its most recent report, the Civil Rights Commission commented on the need for consolidation of Federal Government anti-discriminatory efforts:

"In October 1970, the Commission concluded that only by transferring OFCC's contract compliance responsibilities and Justice's litigation responsibilities to EEOC could effective coordination of Federal equal employment efforts be achieved. In the light of continued ineffective coordination, the Commission continues to believe that consolidation of equal employment opportunity functions is necessary."

Consequently, the bill provides that the present authority of the Attorney General to bring cases involving a pattern or practice of resistance to Title VII would be transferred to EEOC. Second, the activity under Executive Order 11246 relating to equal employment opportunity by government contractors would be transferred from the Secretary of Labor to the Commission. Third, the overall supervision for Equal Employment Opportunity for Federal employees would be transferred from the Civil Service Commission to the Equal Employment Opportunity Commission.

The bill also contains other significant provisions. The Commission's jurisdiction would be extended to include employers and unions with eight or more employees and members, State and local Government employees, and teachers.

Finally, the bill makes a number of changes relating to the organization of the Commission recordkeeping requirements and the procedures involved in administrative enforcement.

I believe that by enacting this bill we will be able to finally make the Commission a truly effective instrument for preventing discrimination in employment and fulfilling the Congressional commitment to equal employment opportunity made several years ago.

#### STATEMENT BY SENATOR KENNEDY

Mr. President, I am cosponsoring the Equal Employment Opportunities Enforcement Act of 1971 because I believe that its grant of cease and desist power to the EEOC is vital to the accomplishment of the national goal of equal access to jobs for all Americans, and because we have waited too long to extend the provisions of the 1964 Equal Employment Act to state and local government and to additional private employers.

I wish to express, however, my serious concern that the bill's transfer of all equal employment functions from Department of Labor, Department of Justice and the Civil Service Commission to the EEOC at this point in time may impose an unmanageable burden on that already overworked and underfunded agency. Moreover, this transfer may place all of the equal employment eggs in one basket—a basket that might turn out to be a weak one if a majority of the Commission members is not enthusiastic and courageous about implementing the mandate of the 1964 Civil Rights Act.

But, I am confident that these concerns will receive full consideration in the hearings and debate on the bill, and that the final version of the legislation will reflect such changes or protections as may appear necessary. I therefore am pleased to cosponsor the bill at this time as evidence of my desire for its speedy processing and its passage at the earliest possible time.

September 14, 1971

ADDITIONAL COSPONSOR OF A  
RESOLUTION

SENATE RESOLUTION 73

At the request of Mr. BYRD of West Virginia, the Senator from Utah (Mr. Moss) was added as a cosponsor of Senate Resolution 73, amending rule XVI of the Standing Rules of the Senate.

NOTICE OF HEARING ON NOMINA-  
TIONS

Mr. BYRD of West Virginia. Mr. President, on behalf of the Committee on the Judiciary, and at the request of the distinguished chairman, Mr. EASTLAND, I desire to give notice that a public hearing has been scheduled for Tuesday, September 21, 1971, at 10:30 a.m., in room 2228, New Senate Office Building, on the following nominations:

John A. Field, Jr., of West Virginia, to be U.S. circuit judge, fourth circuit, vice Herman S. Boreman, retired.

Sherman G. Finesilver, of Colorado, to be U.S. district judge, district of Colorado, vice William E. Doyle, elevated.

William Brevard Hand, of Alabama, to be U.S. district judge, southern district of Alabama, vice Daniel H. Thomas, retiring.

James Hunter III, of New Jersey, to be U.S. circuit judge, third circuit, vice William F. Smith, deceased.

James Rosen, of New Jersey, to be U.S. circuit judge, third circuit, vice William H. Hastie, retired.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

The subcommittee consists of the Senator from Mississippi (Mr. EASTLAND), chairman; the Senator from Arkansas (Mr. McCLELLAN), and the Senator from Nebraska (Mr. HRUSKA).

NOTICE OF HEARING IN PROVIDENCE, R.I., ON CUTBACKS IN  
MEDICARE AND MEDICAID COV-  
ERAGE

Mr. RANDOLPH. Mr. President, I ask unanimous consent that I may be permitted to have printed in the Record an announcement by the Senator from Maine (Mr. MUSKIE) with regard to a hearing to be held in Providence, R.I., September 20, 1971, on "Cutbacks in Medicare and Medicaid."

There being no objection, the statement by Senator MUSKIE was ordered to be printed in the Record, as follows:

## STATEMENT OF SENATOR MUSKIE

Mr. President, the Subcommittee on Health of the Elderly of the Senate Special Committee on Aging will continue its study of the impact on older Americans of proposed cutbacks in Medicare and Medicaid coverage. The subcommittee's first hearing was held in Los Angeles, California, on May 10, 1971, and a second hearing was held in Woonsocket, Rhode Island, on June 14, 1971.

Our next hearing on this subject will take place on September 20, 1971, in Providence, Rhode Island, at 10 a.m., at the Sts. Peter and Paul Auditorium, Franklin Street. Senator Claiborne Pell will preside.

## ADDITIONAL STATEMENTS

SENATOR WINSTON L. PROUTY,  
OF VERMONT

Mr. McGEE. Mr. President, it is with a deep sense of loss that I rise to pay my respects to the memory of a very esteemed colleague, Winston Prouty. His death last week came as a shock to all of us who deeply respected his attributes.

Winston Prouty was a man of high integrity and honor, who totally committed himself to the work of public service.

Few of us now in the Senate can forget the hard and articulate fight he led for the social security program in 1968. His pleas for a guaranteed annual income at that time clearly indicated he was a man of vision. I know the rest of my colleagues share this sense of loss and mourn the passing of a great statesman. This has been a tragic loss, not only for the people of Vermont, but for the Nation as well.

Mr. RIBICOFF. I was saddened to learn of the death last Friday of the distinguished junior Senator from Vermont, Winston L. Prouty.

Senator Prouty had served the people of Vermont well over the last 33 years, first as mayor of Newport, then as a State representative, and later as the chairman of the State water conservation board. In 1950, he was elected to the first of four terms in the House of Representatives and in 1958 won the first of three elections to the Senate.

All of us who served with Win Prouty will remember his distinguished work on the District of Columbia, Rules, Labor and Public Welfare, and Commerce Committees, especially his efforts on behalf of the elderly, the St. Lawrence Seaway, and Federal aid for school construction.

Senator Prouty's reflective manner and effective advocacy will be sorely missed by the Senate, the citizens of Vermont, and the entire Nation.

Mr. BYRD of Virginia. Mr. President, I am deeply saddened, as is every Member of the Senate, at the death of our esteemed colleague, Senator Winston L. Prouty, of Vermont.

Senator Prouty, a native and resident of Newport, Vt., gave 33 years of his life to the public service of his State and Nation.

During the 21 years he served in Congress, Senator Prouty was a steadfast patriot, one who championed the causes of education, the workingman, and the elderly.

Senator Prouty was a thoughtful man and an effective legislator. Spare of frame and quiet in manner, Senator Prouty showed a dogged persistence and attention to detail that always helped the Senate to produce sounder legislation.

Senator Prouty may be best remembered for his efforts in behalf of senior citizens, but in every area where he turned his attention, he proved himself a faithful, dedicated public servant.

Mr. INOUE. Mr. President, Senator Winston Prouty was noted for his tenacious perseverance in carrying out his

responsibilities as a U.S. Senator. He represented his State and his people well.

In addition to his State constituency, today there are millions of Americans who grieve his passing, in particular, the elder citizens of our Nation for whom he was in the forefront proposing legislation to provide a better life for them.

Win Prouty will be missed. I join my colleagues in expressing my deepest condolences to his beloved wife.

## PRISON REFORM

Mr. BELLMON. Mr. President, I am sure that other Members of the Senate are as stunned and outraged as I am at the bloody and violent episode at New York State's Attica State Prison which left 38 hostages and inmates dead. The slaughter of human life that occurred yesterday was more horrifying than any such event in recent times. However, it followed by only a few weeks the disturbance at San Quentin Prison in California, in which three guards and three inmates were killed.

While these incidents are indelibly impressed on the minds of Americans because of their current nature, the prison system throughout the country has been marred by similar uprisings all too often in recent years. In fact, America's penal system has become a breeding ground for rebellion.

Prison riots are a blot on the fabric of our society. Yet they are inevitable as long as our prisons remain in the condition they are in. No decent citizen can condone the actions of the prisoners at Attica in assigning executioners to murder hostages in cold blood. But the shock of this unnecessary massacre should create an awareness among thinking citizens of the problems of the prisons, and move us to look into the causes for such violence and take steps to reform our inhuman and ineffective correctional efforts.

The problems in our present prison system are not new ones. They have existed since man first began placing his fellowman in captivity for defying the laws of his society. The problems begin with the prisoner himself. The average prison inmates is a man lacking in education, lacking in skills, lacking in self-respect. Chances are he has a history of drug abuse and probably is suffering from emotional difficulties. Also, and this is an important point to remember, more than likely he has had at least one prior conviction.

Take a man with that kind of background, put him in prison for 5 years, and what happens? Under the present system, this amounts to an interminable period of confinement in a world of sterile walls, steel bars, long corridors, and chain links. As a result, the factors that led a man to commit a crime in the first place are augmented; and when he is released, all too often he ends up back in prison within a short time.

Our prisons are severely lacking in the kind of activities to keep a prisoner suitably occupied. Training programs are in-

December 17, 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that it be in order at this time to order the yeas and nays on the conference report on the foreign aid authorization bill.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

#### PRIVILEGE OF THE FLOOR

Mr. CRANSTON. Mr. President, I ask unanimous consent that during consideration of the conference report and the continuing resolution, two members of my staff, Mr. Tom Halstad and Murray Flanders, be permitted the privilege of the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I make the same request for Kenton Guenther and Charles Warren.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, I make that same request for Hannah McCornack of my office.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

S. 2878. An act to amend the District of Columbia Election Act, and for other purposes;

H.R. 10367. An act to provide for the settlement of certain land claims of Alaska Natives, and for other purposes; and

H.R. 11932. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1972, and for other purposes.

The ACTING PRESIDENT pro tempore (Mr. METCALF) subsequently signed the enrolled bills.

#### QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### ORDER FOR S. 2515, EQUAL EMPLOYMENT OPPORTUNITIES BILL TO BE PENDING BUSINESS ON JANUARY 18, 1972

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate adjourns, its pending business be Calen-

dar No. 412, S. 2515, a bill to further promote equal employment opportunities for American workers.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MANSFIELD. That will be the pending business when we come back on January 18—if we leave before January 18.

#### QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### LEGISLATIVE PROGRAM FOR SECOND SESSION, 92D CONGRESS

Mr. MANSFIELD. Mr. President, so that the Senate will have some indication as to what confronts us in the next session, I would like to make a brief statement at this time which will be read, I hope, by all Members in the Record of today's proceedings, which will appear tomorrow.

With some trepidation I must announce that the legislative logjam that has marked the concluding weeks of the first session of the 92d Congress will mark as well the beginning weeks of the second session.

While the Senate's record has been significant, there remain in this Congress a number of subjects of major importance that must be addressed before the 92d Congress adjourns.

Top on the list are the equal employment opportunity amendments which have been on the Senate Calendar awaiting action since last October 28. It is the intention of the joint leadership to bring this measure before the Senate as its first order of business in the new session. For that purpose S. 2515 has been made the unfinished business.

There will be a number of major items thereafter that will be ready for early consideration. On some, time limitations agreements have already been obtained. The others will be considered on the basis of proceeding until disposed of on the merits. They include voter registration, S. 2574; higher education, S. 659; the equal rights amendment; and welfare and social security, H.R. 1. All of these items are extremely important. All, hopefully, will be disposed of as soon as possible.

Mr. President, I will read the list of these items together with pertinent agreements and announcements that have appeared in connection therewith.

First, S. 2515, equal employment opportunities, the pending business on return for second session, January 18, 1972.

Second. Higher education, S. 659. Time limit of 6 hours, 2 hours on each amendment thereto, and one-half hour

on amendments in the second degree; provided that 3 days' notice be given prior to the consideration of S. 659—RECORD, November 24, S19657.

Third. Equal rights amendment, expected to be reported by February 1, as indicated by Senator ERVIN—RECORD of October 19, S16536:

I believe if it goes over, it will be reported by the 1st of February. I do not believe, with the other press of business, we could possibly do it sooner.

Fourth. Welfare, social security, H.R. 1, expected to be reported by March 1 as indicated by Senator LONG—RECORD, November 17, S18872:

I said to the majority leader earlier today and I said earlier in discussion with him and with other members of the committee prior to that time that it is my hope we can bring the bill out by March 1. It may be that we could have it out here by February 15. That may depend on what schedule the Senate pursues.

Fifth. Voter registration, S. 2574.

#### ESTABLISHMENT AND MAINTENANCE OF RESERVE SUPPLIES OF FARM COMMODITIES

Mr. President, in addition to the items which I have listed as being in line for consideration next year, I wish, on behalf of the distinguished Presiding Officer, the Senator from Montana (Mr. METCALF), and myself, to express the hope that H.R. 1163, a bill to authorize the establishment and maintenance of reserve supplies of farm commodities, will be taken up by the full Committee on Agriculture and Forestry as soon as possible and be reported and placed on the calendar.

It is my understanding that this measure was considered by the appropriate agriculture subcommittee under the chairmanship of the distinguished Senator from North Carolina (Mr. JORDAN) and was reported out of the committee by, I believe, a vote of 9 to 1 or 9 to 0. I do not recall the exact vote. However, because of the lateness of the session, it was evidently impossible for the full committee to meet, and in order to keep the record clear and to clear up any misunderstandings about this bill, I would point out it is not now on the calendar. It has not been before the full Committee on Agriculture and Forestry. It will not be eligible for consideration in the Senate until it is reported by the committee and placed on the Calendar. I want to state, on behalf of the two Senators from Montana (Mr. METCALF and Mr. MANSFIELD), who cosponsored the bill in the Senate, our hope that it will be given expeditious consideration as soon as possible.

Mr. President, what this proposed schedule indicates is that Members should get a good rest when we adjourn this year because next year being a political year and being also a very difficult legislative year will require that Senators come back in the best of health and, hopefully, in the best of spirits.

Mr. JAVITS. Mr. President, will the Senator yield?

The ACTING PRESIDENT pro tempore. Will the Senator first permit the Chair to complete morning business?

Mr. MANSFIELD. Mr. President, I ask



unanimous consent that the period for the transaction of routine morning business be continued for another 15 minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I notice that the first item on the Executive Calendar, which has been there for months, is the treaty respecting genocide. I would greatly appreciate hearing from the majority leader as to his disposition on that measure.

Mr. MANSFIELD. The Senator has pressed me nearly every day for the last 5 or 6 months about this measure. Unfortunately, a propitious time, in my opinion, has not arisen at which to consider that most important treaty—a treaty which the distinguished Senator from New York had so much to do with in getting out the report of the Committee on Foreign Relations, and in which the distinguished Senator from Wisconsin (Mr. PROXMIRE) has shown such an intensive interest over the past 3 years to my knowledge, if not longer.

If the Senator would allow me at this time not to make a definitive statement of commitment, I would be glad to discuss this matter with him when we come back next year and see then what the prospects are.

Mr. JAVITS. May I ask the majority leader quite frankly whether it would make a difference to him in his evaluation of the situation if there began to be evidence of greater active interest on the part of Senators in regard to this matter.

Mr. MANSFIELD. Yes, I am interested in sufficient numbers. The Senator understands what I have in mind.

Mr. JAVITS. I thank the Senator. The Senator from Montana yields to no one in his sense of humility and I think it would be unfair to him if the RECORD did not indicate some personal appraisal of the situation. I understand it well.

I think it is the desire of the Senator from Wisconsin (Mr. PROXMIRE) and me, and I might add the Senator from Idaho (Mr. CHURCH) who chaired a special subcommittee on this subject, to convince the majority leader that the time has come to deal with this long-deferred matter in the Senate. I do not say that with a desire of being forensic, but to convince him that the time has come.

Mr. MANSFIELD. I appreciate the comments of the Senator from New York.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. PROXMIRE. Mr. President, I wish to add a brief comment. I thank my good friend for raising this issue. It is something that has been badly neglected. There is not a single proposal before the Senate that has been before the Senate this long. The majority leader a few minutes ago referred to one issue that has been before the Senate since October 28, but this genocide matter has been pending before the Senate for 20 years. It is a matter that every President supported. President Nixon is very much in favor of this measure as were Presidents Johnson, Kennedy, Eisenhower, and Truman; all of our Presidents have been for it.

There is no question that the United States took the principal initiative more than 20 years ago in the United Nations for the genocide treaty. This is something the Senate itself can accomplish. We do not have to wait for the other body. It is something entirely up to us. I hope at long, long last this terrible crime, the worst conceivable crime, can be handled by the Senate in a treaty which has been given very great consideration and which has overwhelming support. Many organizations have testified in favor of it. As the Senator from New York said so well, it is so pertinent and should be on our minds now.

People say that genocide took place years ago and will not happen again. In the last few weeks we saw genocide take place in Pakistan on a tragic scale. So I would hope that this treaty, for which the Senator from New York has fought, as I have, will, at long last, come before the Senate for a vote.

Mr. JAVITS. I may say that the Senator from Montana has told us how to do it—to wit, get enough incentive for action. I take that as a mandate. I shall join, feeling that we are engaged in a great debt of honor to the Senator from Wisconsin, in trying to bring this about. I think our job is very clear. I think the majority leader has been very fair today. It is up to us to show him that the time has come to have it brought up, and I think we will do it.

Mr. PROXMIRE. I thank the Senator from New York. This is an excellent proposal. We can get together, showing what kind of proposal we can agree on so we can show that to the Senator from Montana.

Mr. JAVITS. I think the objections are ill founded and limited in their view, but they are objections, and it is up to us to show that the time has come to make a decision.

Mr. PROXMIRE. As the Senator knows, for almost 3 years I have spoken on the subject every day the Senate has been in session.

Mr. JAVITS. I know, and the Senator is entitled to the thanks not only of this country, but of the world, and I think he will receive them. I know the treaty will be ratified because he proposes, as I do, to do what the majority leader suggests we should do.

The ACTING PRESIDENT pro tempore. The time has expired.

#### EXTENSION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time for morning business be extended for an additional 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum. The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### THE CALENDAR

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 560, 561, 562, and 563, all of which have been cleared.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### AUTHORIZATION FOR PRINTING OF ADDITIONAL COPIES OF "WAR POWERS LEGISLATION"

The concurrent resolution (S. Con. Res. 54) to print additional copies of hearings on "War Powers Legislation" was considered and agreed to, as follows:

S. CON. RES. 54

*Resolved by the Senate (the House of Representatives concurring).* That there be printed for the use of the Senate Committee on Foreign Relations five thousand additional copies of the hearings entitled "War Powers Legislation" held before the Senate Committee on Foreign Relations.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-586), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

Senate Concurrent Resolution 54 would authorize the printing for the use of the Senate Committee on Foreign Relations of 5,000 additional copies of its hearings entitled "War Powers Legislation."

The printing-cost estimate, supplied by the Public Printer, is as follows:

#### Printing-cost estimate

5,000 additional copies, at \$1,957 per thousand	\$9,785
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#### AUTHORIZATION FOR PRINTING ADDITIONAL COPIES OF "A PRIMER ON MONEY"

The concurrent resolution (H. Con. Res. 439) to provide for the printing of 50,000 additional copies of the subcommittee print of the Subcommittee on Domestic Finance of the House Committee on Banking and Currency, entitled "A Primer on Money," was considered and agreed to.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-587), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

House Concurrent Resolution 439 would authorize the printing for the use of the House Committee on Banking and Currency of 50,000 additional copies of the Subcommittee Print of the Subcommittee on Domestic Finance, 88th Congress, second session, entitled "A Primer on Money."

The printing-cost estimate, supplied by the Public Printer, is as follows:

#### Printing-cost estimate

Back to press, first 1,000 copies	\$1,285.28
49,000 additional copies, at \$200.50 per thousand	9,824.50

Total estimated cost, H. Con. Res. 439	11,109.78
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The PRESIDING OFFICER. Without objection, it is so ordered.

**EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971**

Mr. BYRD of West Virginia. Mr. President, in accordance with the previous order, I ask that the Chair lay before the Senate Calendar No. 412, S. 2515, and that it be made the pending business.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read the bill by title, as follows:

A bill (S. 2515) to further promote equal employment opportunities for American workers.

The Senate proceeded to consider the bill, which had been reported with an amendment.

**ADJOURNMENT SINE DIE**

Mr. BYRD of West Virginia. Mr. President, with best wishes for a pleasant and

reflective holiday season to my distinguished counterpart, Senator GRIFFIN, my namesake from Virginia (Mr. BYRD) the Presiding Officer, Senator NELSON, the Senator from Vermont (Mr. AIKEN), and all Senators, pages, and the ever watchful eye of the fourth estate, I move, in accordance with the provisions of House Concurrent Resolution 498, that the Senate stand in adjournment sine die.

The motion was agreed to; and (at 1:32 p.m.) the Senate adjourned sine die.

ernment spending and on the smashing deficits."

Of course, a great many economists will say that the thing to do is to have heavy deficits. Maybe theoretically they are right. However, I have seen these economists wrong so many times and I have seen the experts in Washington wrong so many times on so many things, including on the war in Vietnam, that I am not going to go by what the experts say. I am going to go by what seems logical and sound insofar as a smalltown newspaper editor, who is now U.S. Senator, views these problems.

I do not think it is logical to say that we are going to solve all of our problems by Government spending and spending more and more money. If that could be done, why would not every country in the world be prosperous? Why would not every government be prosperous? If we can create prosperity with a \$35 billion deficit, which we will have for this current fiscal year, then why can we not create a little more prosperity by increasing that figure to \$40 billion or \$50 billion and get some positive results over a short period of time?

Mr. President, this is not something that is done only for a short period of time. It is not a temporary expedient. This Government deficit spending has been going on, but not to the extent that it is now, for more than 30 years.

As I have said, only three times in the last 20 years has the Federal Government's budget been balanced. But what is bringing it to a head and what is causing the President to put on wage and price controls, and what is causing foreign nations to say, "I do not want your dollars at the same value as in the past," and what is causing the President to ask for a formal devaluation of the dollar is what has happened in only 3 years.

In the first 3 years of President Nixon's administration the accumulated Federal funds deficit of the Federal Government will be at least \$78 billion. Now, let us compare that to the accumulated Federal funds deficit of the last 3 years of President Johnson's administration. The accumulated deficit of the last 3 years of President Johnson's administration was \$49 billion.

Mr. President, you can see that in that 6-year period the accumulated Federal funds deficit of the Government will be \$127 billion. As time goes on the American people will have to pay for that. They will have to pay for that through inflation or through higher taxes or both.

On this last day of the session in this calendar year 1971, Mr. President, I want to do something that I do not believe in doing, and very seldom do. I am going to predict that in 1973, regardless of who is elected President, the people of this country, are going to be called upon to pay a smashing increase in Federal taxes. And where does that money come from? The bulk of that money comes from those in the middle economic group. They are the ones hurt the hardest by both inflation and by taxation. Those in the middle eco-

nomic bracket are hurt the most. They are the ones who pay the bulk of the taxes. Those who are living in very deep poverty will not be adversely affected because they, unfortunately, are in very unfortunate circumstances already.

Those who have great wealth have a way of protecting themselves. I am not concerned about them. But it is the average guy, the man who goes out to make a living, who works in the factories, who works on the farms, who works in the stores, who works for the various governments of our Nation. They are people who are going to be the most severely affected by this reckless program of Government financing that has been embarked on by both administrations, by both Republicans and Democrats. It is not a party matter for both of them have the same desire to spend public funds. But those who are going to be most adversely affected are those hard working people of our Nation who are trying to earn a living for themselves and who are trying to accumulate enough money to take care of their children and to educate their children.

I must say the Senator from Virginia is discouraged insofar as seeing any evidence that this Congress or this administration is prepared to face up to this very, very serious financial problem facing the United States.

The people living outside the United States see it far better than we see it right here in our country, and that is why these foreign bankers are demanding a devaluation of the dollar.

The President in August, very wisely in my judgment, cut the Nation loose from gold. Now, why did he do that? He did that for the very simple reason that the United States only has \$10 billion in gold and yet our liquidated liabilities to foreigners, for which presumably they can demand gold in return, or theoretically they can, are \$46 billion.

So the President was very wise in what he did in that regard in August, it seemed to me. Our financial situation is getting worse. Perhaps the devaluation of our currency will cause the American people to have some concern for the future. Perhaps it will cause Congress and the administration to attempt to straighten out this matter. But I must say that there is nothing I have seen in Washington that indicates that this may be the situation.

Mr. President, if we do not reverse our procedures in this regard then we will continue to have inflation, we will continue to have a devalued currency, and we will, sooner or later, have a smashing tax increase.

Mr. President, I have prepared some tables showing what I regard as the desperate financial situation facing the Government of the United States. I ask unanimous consent that the three tables may be printed in the Record at this point.

There being no objection, the tables were ordered to be printed in the Record, as follows:

TABLE 1.—U.S. GOLD HOLDINGS, TOTAL RESERVE ASSETS AND LIQUID LIABILITIES TO FOREIGNERS

[Selected periods, in billions of dollars]

	Gold holdings	Total assets	Liquid liabilities
End of World War II.....	20.1	20.1	6.9
1957.....	22.8	24.8	15.8
1970.....	10.7	14.5	43.3
October 1971.....	10.1	12.1	146.0

<sup>1</sup> Estimated figure.

Source: U.S. Treasury Department.

TABLE 2.—DEFICITS IN FEDERAL FUNDS AND INTEREST ON THE NATIONAL DEBT, 1961-72 INCLUSIVE

[In billions of dollars]

	Receipts	Outlays	Deficit (-)	Debt interest
1963.....	83.6	90.1	-6.5	10.0
1964.....	87.2	95.8	-8.6	10.7
1965.....	90.9	94.8	-3.9	11.4
1966.....	101.4	106.5	-5.1	12.1
1967.....	111.8	126.8	-15.0	13.5
1968.....	114.7	143.1	-28.4	14.6
1969.....	143.3	148.8	-5.5	16.6
1970.....	143.2	156.3	-13.1	19.3
1971.....	133.6	163.8	-30.2	20.8
1972 <sup>1</sup> .....	143.0	178.0	-35.0	21.2
10-year total....	1,152.7	1,304.0	151.3	150.2

<sup>1</sup> Estimated figures.

Source: Office of Management and Budget, except 1972 estimates.

TABLE 3.—FEDERAL FINANCES, FISCAL YEAR 1971

[In billions of dollars]

	Revenues	Outlays	Deficit (-) or surplus (+)
Federal funds.....	133.6	163.8	-30.2
Trust funds.....	54.7	47.8	+6.9
Unified budget.....	188.3	211.6	-23.3

Source: U.S. Treasury Department.

#### AMERICAN PRISONERS OF WAR

Mr. BYRD of Virginia. Mr. President, before Congress adjourns I wish to call to the attention of the Senate and the American people, the prisoners of war and those missing in action as the result of our involvement in Vietnam. At this Christmas season, when most of us hope to be home with our families, a large group of Americans are being held captive in a foreign land and others are missing in action as the result of being sent to a foreign land to fight a war on behalf of the American people.

I think it is very important, Mr. President, that we who are fortunate enough to be here at home not forget the plight of our prisoners of war and our missing in action at this Christmas season, and that we have them especially in our thoughts.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. NELSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.



application of the Hickenlooper amendment to Chile, following its copper nationalization. He said that this amendment in no way affects Chile because no project covered by the Hickenlooper amendment is being carried out here.

#### ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 2709

At the request of Mr. HATFIELD, the Senator from Montana (Mr. MANSFIELD) and the Senator from Colorado (Mr. DOMINICK) were added as cosponsors of S. 2709, to permit American citizens to hold gold in the event of the removal of the requirement that gold reserves be held against currency in circulation.

#### ESTABLISHMENT WITHIN THE BUREAU OF THE CENSUS OF A NATIONAL VOTER REGISTRATION ADMINISTRATION—AMENDMENTS

AMENDMENTS NOS. 607 AND 608

(Ordered to be printed and to lie on the table.)

Mr. GOLDWATER submitted two amendments, intended to be proposed by him, to the bill (S. 2574) to amend title 13, United States Code, to establish within the Bureau of the Census a National Voter Registration Administration for the purpose of administering a voter registration program through the mail.

#### EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENT NO. 609

(Ordered to be printed and to lie on the table.)

Mr. ERVIN submitted an amendment, intended to be proposed by him, to the bill (S. 2515) to further promote equal employment opportunities for American workers.

AMENDMENT NO. 611

(Ordered to be printed and to lie on the table.)

Mr. DOMINICK, Mr. President, on behalf of myself, Mr. BAKER, Mr. BROCK, Mr. BUCKLEY, Mr. ERVIN, Mr. FANNIN, Mr. HOLLINGS, and Mr. TOWER, I introduce for printing and future appropriate consideration an amendment to S. 2515, the Equal Employment Opportunities Enforcement Act of 1971. Essentially, the amendment strikes all language vesting the Equal Employment Opportunity Commission with cease and desist powers and substitutes therefor language giving the EEOC power to bring employment discrimination disputes to Federal court for resolution.

The amendment does not affect present bill language which: first, improves the respondent's rights of due process by requiring a 10-day notification of the filing of a Commission charge and a 2-year limitation of back pay liability; second, provides procedures whereby approximately 10.1 million State and local government employees and 2.6 million civil service and postal workers can redress their employment discrimination grievances through Federal district courts;

third, expands the coverage of Commission jurisdiction to those private employers of eight or more employees; fourth, does not limit aggrieved employees to only title VII remedies or limit class action; and fifth, transfers the Justice Department's "pattern and practice" suit jurisdiction and the Labor Department's Office of Federal Contract Compliance to the EEOC.

Mr. President, what this amendment would do is to guarantee the protection of both parties' rights through fair, effective, and expeditious Federal court machinery. It would avoid the legendary vicissitudes of presidentially appointed boards and vest adjudicatory power where it belongs—in impartial judges shielded from political winds by life tenure. Judges who render their decisions in a climate tempered by judicial reflection and supported by a historical judicial independence influenced only by stare decisis. This amendment permits the aggressive and active advocacy of equal employment opportunity so necessary at the investigatory and prosecutory levels, yet preserves the impartiality of the courts at the adjudicatory level.

Mr. President, effective protection of the rights of all parties also demands a speedy resolution of a dispute. A court approach, rather than a cease and desist procedure, better serves this goal. Only one step—a district court order that is immediately self-enforcing and backed by the court's contempt powers—is needed. A commission cease and desist order, on the other hand, must be brought to a court of appeals before it achieves similar sanction powers. Additionally, the judge who is enforcing his own orders rather than those of some commission will be more determined that such orders are obeyed.

The determination of how best to fulfill our national commitment to the elimination of all forms of employment discrimination must be determined by clear consideration of the alternatives. If the issue is examined objectively, I believe my colleagues will agree that a court approach provides the best and fairest machinery for providing hope for the future of all Americans.

Mr. President, I ask unanimous consent that the text of the amendment be printed at this point in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT No. 611

On page 33, after line 24, insert the following:

"Sec. 4. (a) Paragraph (6) of subsection (g) of section 706 of the Civil Rights Act of 1964 (78 Stat. 258; 42 U.S.C. 2000e-4) is amended to read as follows:

"(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to recommend institution of appellate proceedings in accordance with subsection (j) of this section, as redesignated by section 4(d) of the Equal Employment Opportunities Enforcement Act of 1971, when in the opinion of the Commission such proceedings would be in

the public interest, and to advise, consult, and assist the Attorney General in such matters."

"(b) Subsection (h) of section 705 of such Act is amended to read as follows:

"(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, except that the Attorney General shall conduct all litigations to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commissioner."

On page 34, beginning with line 1, strike out through the end of the parenthetical in line 3 and insert in lieu thereof:

"(c) Subsections (a) through (e) of section 706 of such Act."

On page 38, beginning with line 7, strike all through line 7, page 50, and insert in lieu thereof the following:

"(f) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge. If the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person named in the charge as claiming to be aggrieved or (2) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) of this section or further efforts of the Commission to obtain voluntary compliance."

On page 50, beginning with line 8, strike all through line 19, and insert in lieu thereof the following:

"(d) (1) Subsections (f), (h), (i), (j), and (k) of section 706 of such Act, and all references thereto, are redesignated as subsections (h), (j), (k), (l), and (m), respectively.

"(2) Subsection (g) of such section 706 is redesignated as subsection (i), and a new subsection (g) is inserted as follows:

"(g) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

"(e) Subsection (i) of section 706 of such Act, as redesignated by paragraph (2) of section 4(d) of this Act, is amended to read as follows:

"(1) If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable."

On page 56, beginning with line 7, strike all through line 19.

On page 56, line 20, strike out "Sec. 8" and insert in lieu thereof "Sec. 7".

On page 60, beginning with line 3, strike all through line 9, page 61.

On page 61, line 10, strike out "(h)" and insert in lieu thereof "(f)".

On page 61, line 13, strike out "Sec. 9" and insert in lieu thereof "Sec. 8".

On page 62, line 18, strike out "Sec. 11" and insert in lieu thereof "Sec. 10".

On page 65, line 21, strike out "(q)".

On page 65, strike out lines 23 and 24.

On page 65, line 25, strike out "(e)" and insert in lieu thereof "(d)".

On page 66, line 6, strike out "Sec. 12" and insert in lieu thereof "Sec. 11".

On page 66, line 14, strike out "Sec. 13" and insert in lieu thereof "Sec. 12".

#### CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1971—AMENDMENTS

##### AMENDMENT NO. 610

(Ordered to be printed and to lie on the table.)

Mr. HARTKE submitted an amendment, intended to be proposed by him, to the bill (S. 986) to provide minimum disclosure standards for written consumer product warranties against defect or malfunction; to define minimum Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

#### REVENUE ACT OF 1971—AMENDMENTS

##### AMENDMENTS NOS. 612 THROUGH 614

(Ordered to be printed and to lie on the table.)

Mr. WILLIAMS. Mr. President, I submit today three amendments to H.R. 10947, a bill "to provide a job development investment credit, to reduce individual income taxes, to reduce certain excise taxes, and for other purposes."

Essentially, my amendments would first, remove the limitations on deductibility of medical expenses, second, allow a deduction with certain limitations for the money paid by the taxpayer for transportation to and from his place of residence and place of employment, and third, amend the Internal Revenue Code to encourage the construction of housing facilities for agricultural workers by permitting the amortization over a 60-month period of the cost of constructing such facilities.

Mr. President, I know that everyone is anxious for early enactment of this legislation which has been designed to take meaningful action in response to the President's tardy but welcome call for a new national economic policy. The bill as it came from the House of Representatives provides for a renewal of the 7-percent investment tax credit, for a modification of the administration's accelerated depreciation program, for the removal of the 7-percent automobile excise tax, and for a speedup of personal income tax exemptions which were first enacted in the 1969 tax reform bill.

Yet, it is my feeling that more must be done to provide relief for the "little guy," the taxpayer who shoulders the largest burden in our revenue system. Persons with smaller incomes tend to pay a higher tax rate and they need additional relief, particularly in view of the experience of the past two years which has seen local property taxes sky-rocketing and additional tax burdens levied by the States.

While I do not feel that the Revenue Act of 1971 should be expanded to include an unlimited number of reform provisions, I do feel that the three amendments which I propose today will target relief where the need is critical.

##### ELIMINATION OF THE 3-PERCENT FLOOR ON MEDICAL EXPENSES AND THE 1-PERCENT FLOOR ON DRUG EXPENSES

We have all been talking during this past year of the health care crisis in America. We know that hospital costs have skyrocketed. We know of the financial disaster which confronts any individual who is stricken with serious illness, and we know that the President has established a special arm of his new Cost of Living Council designed to pay special attention to rising prices in the health services industry. Thus, the adoption of this amendment would benefit all taxpayers. Virtually all of the approximately 30 million taxable returns which are currently itemized would show tax reductions for medical expenses below the current 3-percent floor. In addition, the removal of the floor would provide incentive to itemize for an estimated 5 million taxpayers filing returns and now using the minimum standard deduction. Most of these returns will be filed by young couples who earn above \$10,000 and who heretofore were unable to claim any medical deduction because they were unable to get in under the floor imposed by existing law.

While we in the Congress are currently debating the best way to make health care a right for every American, to make health care less expensive and more available, and to improve the quality of the delivery system, I feel strongly that we must at this time allow for the deduction of all medical and drug expenses. Perhaps when more comprehensive legislation is enacted, this action will be unnecessary; but for the present, we can brook no further delay.

##### COMMUTING EXPENSES

This proposal would allow a taxpayer to deduct the money he spends on transportation to and from work. The transportation deductions would be limited to

the lower of \$400 or 5 percent of the taxpayers' adjusted gross income. The deduction would further be limited to one 40-mile round trip per day.

The general rule is that commuting expenses back and forth from work are not deductible items. This rule, however, has its natural string of exceptions. Thus, if one drives his car to work in order to carry heavy or bulky tools the Internal Revenue Service may allow a deduction for such use if the car would not otherwise have been used. Some courts have been even more liberal and have allowed deductions where the car would have been used even if no tools would have been transported. The courts have made another exception to the commuting rule and permitted deductions if the taxpayer has to travel by car to a remote place of employment.

Mr. President, the days of walking to work are gone forever. People are spending more time and more money on transportation between home and job. Transit fares alone have tripled since 1948. I do not feel it is fair to require the millions of taxpayers who travel great distances to work each day to haul tools or live in remote places before they can claim a deduction for commuting expenses. Relief in this area is long overdue, and I think my amendment provides a fair and equitable formula.

##### FARM LABOR HOUSING

This amendment would permit any individual who constructs a certified housing facility for agricultural workers to claim a deduction with respect to amortization based on a 60-month period. In effect, this amendment will encourage those agricultural employers who use farm labor to provide desperately needed housing for their workers. In the 10 years during which I served as chairman of the Migratory Labor Subcommittee we saw time and again the horrid conditions facing the migrant farm laborer. If a migrant worker was fortunate enough to be provided housing by his employer, it was substandard at best and most often did not meet the standards of our worst urban slums. Yet, tragically and unconscionably we seem not to care at all about the conditions which they face as they move from far to farm. My amendment is designed to encourage a change in this condition—a change which is long overdue.

##### AMENDMENT NO. 621

(Ordered to be printed and to lie on the table.)

Mr. BAYH. Mr. President, on Wednesday the Senate will consider a series of tax proposals designed to stimulate the economy and get us on the high road to recovery from the Nixon recession. Unfortunately, the President's proposals and the House-passed bill are both inadequate and inequitable. First, they fall about four to six billion dollars short of the fiscal stimulus needed to speak a recovery and cut into the unemployment rate. Second, the package is heavily weighted in favor of permanent breaks to corporate America.

Therefore, I am today submitting an amendment to H.R. 10947 to make the personal income tax cuts originally scheduled for January 1973—and

<b>TRANSMITTAL SLIP</b>		DATE <b>12-20-71</b>
TO: Mr. [REDACTED] and D/Pers		
ROOM NO.	BUILDING	
REMARKS:  <b>FYI - Confirming that S. 2515, Equal Employment Opportunity amendments will be first order of business for Second Session, 92nd Congress. Not much time left to hammer out new position per our note of 3 December.</b>  25X1A [REDACTED]		
FROM: <b>OLC</b>		
ROOM NO. <b>7D35</b>	BUILDING	EXTENSION [REDACTED]
FORM NO. 241 1 FEB 55		

REPLACES FORM 36-8  
WHICH MAY BE USED.

(47)

25X1A

25X1A